



**WINROCK**  
INTERNATIONAL

# Procurement & Reimbursement Guidelines

Winrock International

Improving Lives and Livelihoods Worldwide

## Energy Efficiency and Conservation Block Grant Small Cities & Counties

Working in conjunction with:  
Arkansas Energy Office &  
American Recovery and Reinvestment Act of 2009



Winrock International is a nonprofit organization that works with people in the United States and around the world to empower the disadvantaged, increase economic opportunity, and sustain natural resources.



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This handbook was prepared by Winrock International's Procurement Office using AEO Procurement Standards as the guide for Subrecipient purchasing guidelines, procedures and regulations.

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## I. Subrecipient Procurement Standards Checklist

1. Prior to procuring any goods and/or services subrecipient needs to become familiar with applicable Federal Financial Assistance Regulations [10 CFR 600.100-600.173 Non-profit organizations](#) (Attachment A).
2. Subrecipient must adopt a written Code of Conduct (conflict of interest policy) and ensure that all of their employees and/or agents are familiar with its provisions. Must adhere to Arkansas Code Annotated A.C.A. 19-11-701 to 717. (Attachment B)
3. Subrecipients may not incur expenses prior to signed grant agreement with Winrock.
4. Subrecipients may use their own procurement procedures if they conform to applicable Federal law 10 CFR 600 and the standards outlined in AEO Subrecipient Procurement Standards (Attachment C).
5. A subrecipient may self-certify its procurement system or request that its procurement system be reviewed. Procurement system policies must be in writing and available for review upon request from the recipient or awarding agency.
6. Bond requirements for construction or facility improvements contracts or subcontracts must include specific contract provisions.
7. Subrecipients are required to check the Excluded Parties List system ([www.epls.gov](http://www.epls.gov)) and complete the verification of Contractor Eligibility Form prior to awarding a contract.

## II . AEO Procurement Standards for Subrecipients of AEO Grant Funds Summary

Recipients of EECBG Grant funds are required to familiarize and follow the subrecipient procurement standards as provided in the procurement section of the AEO Procurement Standards.

Listed below are a few key regulations and procedures:

There are four basic procurement methods common to most Arkansas Energy Office Subrecipients of AEO grant funds:

1. Small Purchases
  - a. Two levels of small purchases (1) below \$5000 and (2) more than \$5000, but less than \$25,000.01.

- i. Level one: Under \$5000 - Formal and informal solicitation procedures are not required.
  - ii. Level two: Under \$25,000 - Solicit, in writing written quotes from at least three qualified bidders. Note list of required documentation required.
2. Competitive Sealed Bids
    - a. Required for non-construction goods, services or materials that will exceed \$25,000.
    - b. A competitive bidding advertisement must be published one time each week for not less than two consecutive weeks in a newspaper or trade journal of statewide circulation. Last publication must be not less than one week before bids open.
  3. Competitive Negotiation
    - Involves the solicitation of certain professional services by formally requesting qualification from prospective offerors. Criteria other than cost will be considered.
  4. Noncompetitive Negotiation
    - Award of a contract directly to one firm (sole source) without a formal evaluation process. Awards of this nature are rare and occur when the item is available from only one source, severe need and time constraints do not permit competitive solicitation, formal procurement would result in undue and unreasonable added cost to the total project, or previous solicitation resulted in no response of bidders.

See annex for example of various types of:

1. Bid Advertisement
2. Bid Packet
3. Bid Tabulation and Recommendation
4. Requisition for Approval
5. Purchase Order
6. Contract Agreement
7. Supply and Installation Contract

*Note: These templates are provided by Winrock International to be used as a guide only and should be adapted and modified to meet the needs of the individual subrecipient purposes. Subrecipients own standard templates may be used.*

### **III . Subrecipient Reimbursement Process**

**Step 1:** Subrecipient will be required to submit request for payment to:

Donna Uptagrafft  
Winrock International  
2101 Riverfront Drive  
Little Rock, AR 72202

**Step 2:** Required documentation:

1. Cover sheet providing information of subrecipient name, address and contact.
2. Request for Payment/Expenditure Report – (original)
3. Subrecipient Financial Status Report – (original)
4. Expense Detail
5. Proof of Payment - (copy of check)
6. Vendor Invoice (original)

Additional Back up documentation if applicable:

- Vendor Work Order
- Packing slips, delivery acceptance (copies acceptable)

Provided are samples of the documentation required for reimbursement. Arkansas Energy Office requires originals of supporting documentation for payment.

**Step 3:** Winrock International will review documentation and send directly to Arkansas Energy Office for reimbursement. All payments will be issued by Arkansas Energy Office and sent directly to the subrecipient.

[Attachment A. Federal Financial Assistance Regulations 10 CFR](#)

**Title 10: Energy**

[PART 600—FINANCIAL ASSISTANCE RULES](#)

**Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations**

**Source:** 59 FR 53266, Oct. 21, 1994, unless otherwise noted.

**General**

**§ 600.100 Purpose.**

This subpart implements OMB Circular A–110 and establishes uniform administrative requirements for grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. It also establishes rules governing subawards to institutions of higher education, hospitals, and non-profit organizations (including grants and cooperative agreements administered by State, local and Indian Tribal governments).

[59 FR 53266, Oct. 21, 1994, as amended at 68 FR 50650, Aug. 21, 2003]

## **Example Code of Ethics**

### **Agency Code of Ethics**

The Agency and its employees must, at all times, comply with all applicable laws and regulations. The Agency will not condone the activities of employees who achieve results through violation of the law or unethical business dealings. This includes any payments for illegal acts, indirect contributions, rebates, and bribery. The Agency does not permit any activity that fails to stand the closest possible public scrutiny.

All business conduct should be well above the minimum standards required by law. Accordingly, employees must ensure that their actions cannot be interpreted as being, in any way, in contravention of the laws and regulations governing the Agency's operations.

Employees uncertain about the application or interpretation of any legal requirements should refer the matter to their superior, who, if necessary, should seek the advice of the agency director.

### **General Employee Conduct**

The Agency expects its employees to conduct themselves in a businesslike manner. Drinking, gambling, fighting, swearing, and similar unprofessional activities are strictly prohibited while on the job. Employees must not engage in sexual harassment, or conduct themselves in a way that could be construed as such, for example, by using inappropriate language, keeping or posting inappropriate materials in their work area, or accessing inappropriate materials on their computer.

### **Conflicts of Interest**

The Agency expects that employees will perform their duties conscientiously, honestly, and in accordance with the best interests of the Agency. Employees must not use their position or the knowledge gained as a result of their position for private or personal advantage. Arkansas Code of 1987 Annotated §21-8-304 codifies prohibited activities that are a conflict of interest. Regardless of the circumstances, if employees sense that a course of action they have pursued, are presently pursuing, or are contemplating pursuing may involve them in a conflict of interest with their employer, they should immediately communicate all the facts to their superior.

### **Outside Activities, Employment, and Directorships**

All employees share a serious responsibility for the Agency's good public relations, especially at the community level. Employees must, however, avoid acquiring any business interest or participating in any other activity outside the Agency that would, or would appear to:

- Create an excessive demand upon their time and attention, thus depriving the Agency of their best efforts on the job.

- Create a conflict of interest—an obligation, interest, or distraction—that may interfere with the independent exercise of judgment in the Agency’s best interest.

### **Relationships With Clients and Suppliers**

Employees should avoid investing in or acquiring a financial interest for their own accounts in any business organization that has a contractual relationship with the Agency, or that provides goods or services, or both to the Agency, if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties on behalf of the Agency. Specific procurement law addressing relationships with clients and suppliers is codified in Arkansas Code of 1987 Annotated §19-11-701 et seq. and included in Part 4 of the Procurement Law and Regulations promulgated by the Office of State Procurement.

### **Gifts, Entertainment, and Favors**

Employees must not accept entertainment, gifts, or personal favors that could, in any way, influence, or appear to influence, business decisions in favor of any person or organization with whom or with which the Agency has, or is likely to have, business dealings. Similarly, employees must not accept any other preferential treatment under these circumstances because their position with the Agency might be inclined to, or be perceived to, place them under obligation. Specific procurement law addressing gratuities is codified in Arkansas Code of 1987 Annotated §19-11-707 and included in Part 4 of the Procurement Law and Regulations promulgated by the Office of State Procurement.

Refer to [Rules and Gifts](#) issued by the Arkansas Ethics Commission for detailed rules on gifts.

### **Kickbacks and Secret Commissions**

Regarding the Agency’s business activities, employees may not receive payment or compensation of any kind, except as authorized under the Agency’s remuneration policies. In particular, the Agency strictly prohibits the acceptance of kickbacks and secret commissions from suppliers or others. Any breach of this rule will result in immediate termination and prosecution to the fullest extent of the law. Specific procurement law addressing kickbacks and commissions is codified in Arkansas Code of 1987 Annotated §19-11-707 and §19-11-708 and included in Part 4 of the Procurement Law and Regulations promulgated by the Office of State Procurement.

### **Organization Funds and Other Assets**

Employees who have access to Agency funds in any form must follow the prescribed procedures for recording, handling, and protecting money as detailed in the Agency’s Policy and Procedure manuals or other explanatory materials, or both. The Agency imposes strict standards to prevent fraud and dishonesty. If employees become aware of any evidence of fraud and dishonesty, they should immediately advise the appropriate supervisor.

When an employee’s position requires spending Agency funds or incurring any reimbursable personal expenses, that individual must use good judgment on the Agency’s behalf to ensure that good value is received for every expenditure.

Agency funds and all other assets of the Agency are for Agency purposes only and not for personal benefit. This includes the personal use of organizational assets, such as computers.

### **Organization Records and Communications**

Accurate and reliable records of many kinds are necessary to meet the Agency's legal and financial obligations and to manage the affairs of the Agency. The Agency's books and records must reflect in an accurate and timely manner all business transactions. The employees responsible for accounting and recordkeeping must fully disclose and record all assets, liabilities, or both, and must exercise diligence in enforcing these requirements.

Employees must not make or engage in any false record or communication of any kind, whether internal or external, including but not limited to:

- False expense, attendance, production, financial, or similar reports and statements
- False advertising, deceptive marketing practices, or other misleading representations

### **Dealing With Outside People and Organizations**

Employees must take care to separate their personal roles from their Agency positions when communicating on matters not involving Agency business. Employees must not use organization identification, stationery, supplies, and equipment for personal or political matters.

When communicating publicly on matters that involve Agency business, employees must not presume to speak for the Agency on any topic, unless they are certain that the views they express are those of the Agency, and it is the Agency's desire that such views be publicly disseminated.

When dealing with anyone outside the Agency, including public officials, employees must take care not to compromise the integrity or damage the reputation of either the Agency, or any outside individual, business, or government body.

### **Prompt Communications**

In all matters relevant to customers, suppliers, government authorities, the public and others in the Agency, all employees must make every effort to achieve complete, accurate, and timely communications—responding promptly and courteously to all proper requests for information and to all complaints.

### **Privacy and Confidentiality**

When handling financial and personal information about customers or others with whom the Agency has dealings, observe the following principles:

1. Collect, use, and retain only the personal information necessary for the Agency's business. Whenever possible, obtain any relevant information directly from the

person concerned. Use only reputable and reliable sources to supplement this information.

2. Retain information only for as long as necessary or as required by law. Protect the physical security of this information.
3. Limit internal access to personal information to those with a legitimate business reason for seeking that information. Use only personal information for the purposes for which it was originally obtained. Review the Freedom of Information Act before externally releasing any information.

My signature on this document indicates that I have read and fully understand the prohibited activities and my responsibilities to this agency as listed in this code of ethics.

---

**Name**

---

**Date**

## Attachment C. AEO Subrecipient Procurement Standards

### **Procurement**

#### **AEO Procurement Standards**

The AEO follows all State procurement laws and regulations found in Arkansas Code of 1987, § 19-11-101 through §19-11-1206: Minority Procurement regulations, § 15-4-301 through § 15-4-320; Motor Vehicle procurement regulations, § 22-8-101 through § 22-8-10; Prison Made Goods Act 1967, § 12-30-201 through § 12-30-215; as administered by the AEDC Budget Office.

The AEO procures all goods and services through the Arkansas Economic Development Commission's Budget Office Purchasing Officer who insures that purchases are made in accordance with the Office of State Procurement regulations.

The AEDC Budget Office will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

#### **Arkansas Procurement Regulations**

There are four basic procurement methods common to most Arkansas Energy Office projects and Subrecipients of AEO grant funds:

##### **Small Purchase Procurement**

The procurement of any goods or services that does not exceed \$25,000 per contract in the aggregate, except those defined under the competitive negotiation section, is defined as small purchases.

There are two levels of small purchases with different requirements; (1) below \$5,000 and (2) more than \$5,000, but less than \$25,000.01.

##### **Small Purchases Less than \$5,000**

Small Dollar procedures may be used for purchases that do not exceed \$5,000. Formal and informal solicitation procedures are not required for these purchases.

Submit Purchase Request to the AEO Section Manager and/or AEO Director for approval before issuing a PO to a vendor.

Contact the AEDC Small and Minority Business Division for a list of potential vendors.

The Small Dollar purchasing rule allows agencies to purchase from any vendor without:

- A formal bid opening
- Publicly advertising the specifications
- Without obtaining quotes

### **Small Purchases More Than \$5,000.00, Less than \$25,000.01**

Submit Purchase Request to the AEO Director for approval before proceeding to bidding process.

Contact the AEDC Small and Minority Business Division for a list of potential bidders.

Solicit, in writing, written quotes from at least three qualified bidders.

Identify the lowest responsible bidder and issue a written engagement letter and/or execute a contract for performance to the lowest responsible bidder.

Required documentation before reimbursement is made:

- A written description of the items or services to be procured.
- Copies of written bid solicitations plus documentation of all contacts with the Commission's Small and Minority Business Division.
- Copies of all bids/quotes received with lowest responsible bidder.
- Copies of letters notifying each bidder as to whether or not they are the apparent low bidder.
- Copies of written contracts and/or engagement or notification letters for items or services from the lowest responsible bidder.

### **Competitive Sealed Bids**

A.C.A. §14-58-303 requires Subrecipient to use competitive sealed bidding whenever a contract for non-construction goods, services or materials will exceed \$25,000. Contracts for construction exceeding the sum of \$25,000 must be procured following competitive bidding requirements in accordance with A.C.A. § 22-9-203

Competitive sealed bidding is the process by which prospective bidders are instructed to submit sealed bids for items or services in response to a formal request for bids published by newspaper or trade journal advertisement. The lowest responsible bidder will be awarded the contract.

All competitive bidding advertisements shall be published one time each week for not less than two consecutive weeks in a newspaper or trade journal of statewide circulation. The date of publication of the last notice shall be not less than one week before the day in which bids will be opened.

Procurement steps:

- Preparing a bid package for the items or services to be procured. According to A.C.A. § 22-9-101, all plans, specifications and estimates must be prepared by a state-registered professional engineer if an engineering project exceeds \$25,000, or a state-registered architect if the architectural project exceeds \$100,000.
- Submit plans and specifications to and obtain written approval of plans and specifications from the Arkansas Office of State Procurement.

- Contact AEDC Small and Minority Business Division for potential bidders.
- Advertise for bids once a week for two consecutive weeks in a newspaper or trade journal of statewide circulation.
- Open bids and certify bid tabulations, clearly marking deductive alternatives taken in numerical order and low bidders for each contract.
- Obtain contractor debarment clearance for each apparent low-bidder.
- Notify each bidder in writing as to whether or not they are the apparent low bidder.
- Award contract to lowest responsible bidder.
- Allow 14 days for denied bidders to protest the award before proceeding.

Documentation required includes:

- plans and specifications;
- approval letters from all applicable agencies;
- proof of publication of bid advertisement;
- proof of Small and Minority Business Unit solicitation;
- Certified bid tabulation sheet;
- Verification of Contractor Eligibility Form for each contractor in compliance with Executive Order 12549, "Debarment and Suspension";
- Letters to each bidder regarding whether or not they were the low bidder

## **Competitive Negotiation**

Competitive negotiation involves the solicitation of certain professional services by formally requesting qualifications from prospective offerors.

Respondents will be evaluated on criteria other than cost with the highest qualified respondent being offered the contract upon completion of successful negotiation.

A.C.A. § 19-11-801 requires AEO to negotiate contracts for legal, architectural, engineering and surveying services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices and prohibits the use of competitive bidding for these services.

In accordance with A.C.A. § 19-11-803, in evaluating the qualifications of each firm, the AEO must consider:

- specialized experience and technical competence of the firm
- capacity and capability of the firm to perform the work
- past record of performance of the firm with in controlling of costs and quality of work, ability to meet schedules and deadlines
- the firm's proximity to and familiarity with the project area

The procurement steps are:

- Prepare a Request for Qualifications (RFQ) Package for the desired professional service
- Notify the AEDC Small and Minority Business Division.
- Appoint a selection committee to evaluate statements of qualification received.
- Publish RFQ advertisement (See Sample Form 7) once per week for two consecutive weeks in a newspaper of statewide circulation. The AEO/Subrecipients may also directly solicit RFQs in addition to the advertisement.
- The appointed selection committee shall open all qualifications packages and evaluate RFQs.
- The committee shall compile a list of the top three qualified firms and shall enter into negotiations in accordance with the above process until a firm is selected.
- Notify all firms submitting qualifications of committee results. Allow 14 days for denied firms to protest award.
- Execute contract for professional services with the selected firm.

Required Documentation:

- Request for Qualifications Package
- Memo to file documenting the Commission's Small and Minority Business Division and other direct solicitations
- Proof of Publication of RFQ
- Transmittal letters of RFQ packages sent to respondents
- Copies of responses (statements of qualifications) to RFQ from respondents
- Copy of selection criteria with evaluation scores for each firm or individual scored
- Procurement Summary Sheet listing scores of all respondents
- Letters to each respondent signifying award or non-award of professional services contract
- Executed contract for professional services

### **Noncompetitive Negotiation**

Noncompetitive negotiation involves the award of a contract directly to one firm (sole source) without a formal evaluation process. Such award shall be only in rare instances when: the item is available from only one source, or severe need and time constraints do not permit competitive solicitation, or the time necessary to conduct a formal procurement by other means would result in undue and unreasonable added cost to the total project, or previous solicitations resulted in no response or inadequate response, i.e., inability of bidders to meet the Subrecipient's needs, terms, and conditions

## Procurement Steps

- The AEO must submit a letter to the Office of State Procurement through the AEDC
- Procurement Officer requesting sole source procurement for approval.
- This letter must list the name of the item or service to be procured, the estimated
- cost, the proposed sole-source vendor and all reasons why sole source procurement is
- necessary.
- Required Documentation includes the approved written request and justification, justification, to AEO for approval of sole source procurement and the executed contract.

## Equipment Inventory

State Agencies and subrecipients must maintain asset master records for items which are considered assets according to DF&A accounting regulations. The regulations define capitalized assets as any item over \$2,500. This value includes taxes, shipping, handling and any other cost associated to the asset.”

Items between \$500.00 - \$2,499.99 are considered low value assets and are maintained as such. Controlled items, such as, weapons, radios, cell phones, etc., that are under \$500.00 may also be maintained as low value assets.

## Subrecipient Procurement Standards

It is recommended that prior to procuring any goods and/or services Subrecipients become familiar with the applicable Federal Financial Assistance Regulations 10 CFR §§ 600.100-600.173 Non-Profit organizations, or 10 CFR §§ 600.301-600.381 For-Profit organizations, or 10 CFR §§ 600.200-600.252.

Before beginning any procurement activities, Subrecipient must adopt a written Code of Conduct and ensure that all of their employees and/or agents are familiar with its provisions. This Code of Conduct will ensure that Subrecipients adhere to Arkansas Code Annotated (A.C.A.) §§ 19-11-701 to 717 regarding avoiding conflicts of interest by their employees and agents in the award and administration of Arkansas Energy Office contracts.

Costs for procurement activities are eligible for reimbursement only if they are incurred after AEO issues a grant agreement or approval of the recipient’s request to incur cost.

## 10 CFR 600.236 Summary

The Federal regulations found in 10 CFR 600.236 establish administrative rules for State Agency’s and their Subrecipient’s procurement procedures. A summary of the rules are cited below.

Subrecipients may use their own procurement procedures which reflect applicable State and local laws and regulations, and provided they conform to applicable Federal law and the standards outlined in this section.

Recipients and Subrecipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Recipients and Subrecipients will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Recipient or Subrecipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or any organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The Recipient's or Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Recipient and Subrecipient procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.

Recipients and Subrecipients are encouraged to:

- Enter into State and local intergovernmental agreements for procurement or use of common goods and services
- Use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs
- Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions

Awards will be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

Recipients and Subrecipients will maintain records sufficient to detail the significant history of procurements.

Recipients and Subrecipients will use time and material type contracts only after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

Subrecipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

Protest procedures will be in place to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency.

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- placing unreasonable requirements on firms in order for them to qualify to do business, requiring unnecessary experience and excessive bonding,
- noncompetitive pricing practices between firms or between affiliated

- companies, noncompetitive awards to consultants that are on retainer contracts,
- organizational conflicts of interest,
- specifying only a “brand name” product, not allowing “an equal” product to be offered,
- describing the performance of other relevant requirements of the procurement

Recipients and Subrecipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Recipients and Subrecipients will have written selection procedures for procurement transactions that will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Recipients and Subrecipients will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

### **Methods of procurement to be followed**

#### **Small Purchase**

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

#### **Sealed bids**

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

- In order for sealed bidding to be feasible, the following conditions should be present:
- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively and for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids

- The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond
- All bids will be publicly opened at the time and place prescribed in the invitation for bids
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound documented reason

### **Competitive proposals**

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- Proposals will be solicited from an adequate number of qualified sources;
- Recipients and Subrecipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

Recipients and Subrecipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

### **Noncompetitive proposals**

Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- the item is available only from a single source
- the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- the awarding agency authorizes noncompetitive proposals
- after solicitation of a number of sources, competition is determined inadequate

If the service involves construction activities, a bid package will be required.

A Subrecipient must submit a letter to the Arkansas Energy Office requesting sole source procurement for approval . This letter must list:

- the name of the item or service to be procured,
- the estimated cost,
- the proposed sole-source vendor
- all reasons why sole source procurement is necessary

Subrecipient will then execute contract for goods or services.

Required Documentation:

- Written request, with justification, to AEO for approval of sole source procurement
- Bid package for items or services procured
- Written approval from the AEO for sole source procurement
- Executed contract

### **Small and minority firms, women's business enterprise and labor surplus area firms**

The Recipient and Subrecipient will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative same steps

### **Contract cost and price**

Recipients and Subrecipients must perform a cost or price analysis in connection with every procurement action including contract modifications.

Recipients and Subrecipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with

Federal cost principles (see §600.422). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

### **Awarding agency review**

Recipients and Subrecipients must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase.

Recipients and Subrecipients must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- A Recipient's or Subrecipient's procurement procedures or operation fails to comply with the procurement standards in this section
- Or the procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation
- Or the procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product
- Or the proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement
- Or a proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold

A Recipient or Subrecipient may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified.

A Recipient or Subrecipient will be exempt from the pre-award review if the awarding agency determines that its procurement systems comply with the standards of this section.

A Recipient or Subrecipient may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the Recipient or Subrecipient that it is complying with these standards. A Recipient or Subrecipient will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

### **Bonding requirements**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the Recipient or Subrecipient provided the awarding agency has made a determination that the awarding agency's interest is adequately protected.

If such a determination has not been made, the minimum requirements shall be as follows: *a bid guarantee from each bidder equivalent to five percent of the bid price; a performance bond on the part of the contractor for 100 percent of the contract price or, a payment bond on the part of the contractor for 100 percent of the contract price.*

## **Contract provisions**

A Recipient's and Subrecipient's contracts must contain provisions for:

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- (2) Termination for cause and for convenience by the Recipient or Subrecipient including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by Recipients and their contractors or Subrecipients)
- (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by Recipients and Subrecipients when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by Recipients and Subrecipients in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the Recipient, the Subrecipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after Recipients or Subrecipients make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

10 CFR 600.235 states that Recipients and Subrecipients must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under

Subrecipients are required to check the Excluded Parties List System ([www.epls.gov](http://www.epls.gov)) and complete the Verification of Contractor Eligibility Form prior to awarding a contract and submit a copy of this form to the AEO Program Manager.

To provide some assurance that the Subrecipient complies with this requirement, each month the AEO Program Manager will verify on a sample basis that the parties submitted as eligible are not excluded under the “Debarment and Suspension” order by reviewing a the Excluded Parties List System.

Attachment D. Regulation 10 CFR 100-600.236

§ 600.236 Procurement.

(a) *States*. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards*. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §600.236. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §600.236(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §600.422). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the

one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee’s and subgrantee’s contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8045, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995; 61 FR 7166, Feb. 26, 1996]



**REQUEST FOR PAYMENT / EXPENDITURE REPORT**



**FOR 2009 ARRA GRANT PROGRAM FUNDS**

**SECTION I --- REQUEST FOR PAYMENT (RFP)**

GRANT NUMBER	GRANT PROGRAM	REQUEST NO.	DATE OF RQST.
NAME AND ADDRESS OF GRANTOR AGENCY  Arkansas Energy Office Arkansas Economic Development Commission 900 West Capitol Little Rock, AR 72201	NAME AND ADDRESS OF SUBRECIPIENT    CONTACT NAME:  TELEPHONE #:	MAKE STATE CHECK PAYABLE TO:    ACCOUNT NUMBER:	

**SECTION II --- EXPENDITURE REPORT AND PROJECTED NEEDS (see instructions at bottom)**

Budgeted Categories	Total Current Budget	Expenditures Previously Reported	Expenditures Since Last RFP/ER	Total Expenditures To Date	Balance of Grant Funds	Project Needs/ Actual Invoices
(a)	(b)	(c)	(d)	(e)	(f)	(g)
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
				0.00	0.00	
	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**SECTION III --- Grant Funds**

Grant funds received to date	(1) _____	
Program income to date	Income recived such as interest or fees	(2) _____
Total funds available to date	Total of lines (1) and (2)	(3) _____ 0.00
Actual disbursements to date	Total of column (e)	(4) _____ 0.00
Cash on hand to apply to needs	Total of line (3) in excess of line (4)	(5) _____ 0.00
Projected needs/Actual invoices	Total of column (g)	(6) _____ 0.00
Total amount of this Request for Payment	Total of line (8) less line (5)	(8) _____ 0.00

**SECTION IV --- CERTIFICATION (Must Be Completed by Subrecipient)**

I certify that this Request for Payment has been prepared in accordance with the terms and conditions of the grant agreement with AEO and that the amount requested is proper for payment to the drawer or for credit to the account of the drawer at the drawer's bank. I also certify that the date reported above is correct and that the amount of the Request for Payment is not in excess of current needs.

DATE	AUTHORIZED SIGNATURE	TITLE
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**FOR GRANTOR USE ONLY**

APPROVAL: Grants Administrator	Project Manager	<b>APPROVAL INITIALS</b>	Project Analyst
APPROVAL (Budget Div.):	VOUCHER NUMBER:	WARRANT NUMBER:	

- (a) Enter budgeted category item descriptions
- (b) Enter dollar amount from your budget for each budgeted category
- (c) Enter total of expenditures previously reported by budgeted category
- (d) Enter actual expenditures since the last RFP by budgeted category
- (e) Total expenditures will automatically populate by adding column (c) and (d)
- (f) Balance of grant funds will automatically populate by subtracting column (e) from column (b)
- (g) Enter amount needed by budgeted category, which will usually equal amounts in column (d) unless requesting an advance

Attachment F. Subrecipient Financial Status Report

**XYZ County**

Financial Status Report

ARRA Air Conditioner Project

EFFECTIVE DATE BEGIN April 1, 2010 – September 1, 2010

From the period of April 1 – September 1, 2010

<b>Line Items</b>	<b>Budget Amount</b>	<b>Total Current</b>	<b>Total Cumulative</b>	<b>Amount Remaining</b>
Labor	500.00	400.00	400.00	100.00
Materials	300.00	250.00	250.00	50.00
<b>TOTAL COSTS</b>	<b>800.00</b>	<b>650.00</b>	<b>650.00</b>	<b>150.00</b>
<b>Obligated amount of funds remaining</b>		<b>150.00</b>		

Certified True and Correct:

\_\_\_\_\_  
Signature, County Treasurer

\_\_\_\_\_  
Date

Attachment G. Expense Detail

XYZ County  
 ARRA Grant Funds Expense Detail  
 For the period April 1 – June 30, 2010

Back up #	Date of invoice	Date paid	Check #	Amount	Vendor	Description of goods or services	Additional comments
Attachment H	4/12/2010	4/12/2010	1005	200.00	Concretes R Us	Install concrete slab for a/c	50% deposit required
Total Labor				200.00			
Attachment I	8/30/2010	8/30/2010	1009	250.00	Concretes R Us	Materials for concrete slab	
Total Materials				250.00			
<b>Total Expenses</b>				<b>450.00</b>			

Attachment H. Proof of Payment

Your Company Name	Check # 1005
	Date: _____
Pay to the order of: Concretes R US _____	\$200.00
Two Hundred and 00/100-----	Dollars
Memo _____	_____
	County Treasurer
□□□□ □□ □□□□□□ □□□□□□□□	

Attachment I. Vendor Invoice

**Concretes R US**

**INVOICE**

[Street Address]  
 [City, ST ZIP Code]  
 Phone [509.555.0190] Fax [509.555.0191]

INVOICE #[100]  
 DATE: AUGUST 30, 2010

**TO:**  
 [Name]  
 [Company Name]  
 [Street Address]  
 [City, ST ZIP Code]  
 [Phone]

**SHIP TO:**  
 [Name]  
 [Company Name]  
 [Street Address]  
 [City, ST ZIP Code]  
 [Phone]

**COMMENTS OR SPECIAL INSTRUCTIONS:**

SALESPERSON	P.O. NUMBER	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
					Due on receipt

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Labor for installation of Concrete Pad	\$400.00	\$400.00
1	Materials	\$250.00	\$250.00
	Less Credit for 50% paid 4/12/2010		(\$200.00)
SUBTOTAL			\$450.00
SALES TAX			
SHIPPING & HANDLING			
TOTAL DUE			\$450.00

This is certified to be a true copy of the original  
 Signed: \_\_\_\_\_  
 Date: \_\_\_\_\_

Make all checks payable to Concretes R Us  
 If you have any questions concerning this invoice, contact [Name, phone, e-mail]

**Thank you for your business!**

# CONCRETES R US

## WORK ORDER

TO [Name]  
 [Company Name]  
 [Street Address]  
 [City, ST ZIP Code]  
 [Phone]

SHIP TO [Name]  
 [Company Name]  
 [Street Address]  
 [City, ST ZIP Code]  
 [Phone]

The following number must appear on all related correspondence, shipping papers, and invoices:

**W.O. NUMBER: [100]**

W.O. DATE	REQUESTED BY	DEPARTMENT	INVOICE # FOR BILL	TERMS
4/12//2010	XYZ County		100	50%/50%

STATUS	DESCRIPTION	HOURS	RATE	AMOUNT
QUOTE	Installation of concrete paid			\$400.00
QUOTE	Materials			\$250.00
	50% labor due upon signing			\$200.00
			Subtotal	\$650.00
			Sales Tax	
			Shipping & Handling	
			Other	
			<b>TOTAL</b>	<b>\$650.00</b>

Please send two copies of your work order.

Enter this order in accordance with the prices, terms, and specifications listed above.

**SEND ALL CORRESPONDENCE TO:**

[COMPANY NAME]  
 [STREET ADDRESS]  
 [CITY, ST ZIP CODE]  
 PHONE [403.555.0190] FAX [403.555.0191]

This is certified to be a true copy of the original

**AUTHORIZED BY**

**DATE**



[Street Address]  
 [Address 2]  
 [City, ST ZIP Code]  
 [Country]

PHONE [403.555.0190]  
 FAX [403.555.0191]  
 E-MAIL [someone@example.com]  
 WEB SITE [http://www.treyresearch.net]

Annex 1. Bid Advertisement

Advertisement for (Funder) (Project Name)

(RFQ/ (Number)

Sub Contract: (Sub Contract Number)  
County/State: (County Name/Arkansas)  
Source Origin: Buy American Act as applicable  
Purchasing Agent/ Entity: (Organization Name)  
(Contact Person)  
(Address)  
XXX.XXX.XXXX Phone  
XXX.XXX.XXXX Fax

Commodities: Brief description of goods and/or services

Offer Deadline: **Weekday, Month, Year**

**Note:**

(Organization Name ) is soliciting bids from qualified firms in connection with the supply of (equipment/supply) for the ( ) program. Bids will be accepted from U.S. and other eligible firms. Requests for bid packet and/or submissions of bids will be accepted in writing by (Contact Name, Address, Contact Info – phone/email)

(Name) invites interested and eligible parties from specialized consortia, suppliers, manufacturers, or subcontractors to prepare proposals. Eligible suppliers/subcontractors must have extensive experience in the manufacture, delivery, and maintenance of ( ). The supplier/subcontractor shall be selected in accordance with competitive bidding procedures and best overall value procurement results provided by ( ). **Interested and eligible suppliers/subcontractors wishing to participate in the bidding process should request a copy of the information bulletin and obtain further information from the address specified above.**

**Offer Deadline:**

Bid proposals should be submitted in sealed envelopes to ( ) office, postmarked **no later than \_\_\_\_ PM, Month\_\_\_\_ 20\_\_** and should be valid for 2 months (60 calendar days). Electronic bids submitted via email will be accepted. Partial bids are not allowed. Bid proposals are confidential and will not be transferred or disclosed to third parties. The winner will be officially notified no later than **Month, day, year**.

**TELEPHONE REQUESTS WILL NOT BE HONORED**

Organization/Project Name

RFQ/YEAR/001

Sub Contract:

Country: United States

Source / Origin: Buy American Act as applicable

Issuance Date: Date

Due Date: Date

XXX is soliciting bids from qualified firms in connection with the supply of equipment for the FUNDER project which is DESCRIPTION OF PROJECT

Please submit your quotation in accordance with the following instructions. The winner will be notified by DATE.

Quotations must be submitted by postal mail, fax, or email by 5:00pm CST on DATE to:

Contact Name  
Address  
Phone  
Fax  
Email

The following information must be included:

- Vendor Information
  - Including legal business name
  - Authorized contact
  - Contact information including address, phone number and email
  - 3 business references for similar projects
- Completed Summary of Bid form
- For each item quoted, a detailed description and picture should be included
- Cost quoted must include unit price and total price in USD
- Quotation validity (Quotes must be valid for a minimum of 60 days)
- Completed certifications regarding debarment
- Payment terms and complete banking information
- Any applicable warranty & service Information
  - Include recommended local service location
- Estimated delivery date: see additional shipping instructions below
- If labor for installation is required, include cost separately and estimated timeline

Additional information

Detailed specifications and general requirements for each item are attached.

- Please look at each item's attachment for detailed specifications, terms & conditions, and warranty information
- Partial bids will be accepted
- Equipment must be new
- Brands, models, and pictures on the attached spreadsheets are representative of items identified by local staff to be ideal for this project. Alternatives will be accepted.
- XXX reserves right to make changes or cancel this solicitation as required by FUNDER

**Shipping Instructions – Please separate shipping cost from equipment**

- If possible, please include shipping costs to City, State, if you are unable to provide shipping services, please include specific location of goods
- Include transit insurance to cover full value

**Awards**

- XXX will run an open and fair competitive bidding process.
- Awards will be based on a variety of factors including, but not limited to technical acceptability (features, warranty, and support services), price, delivery time, and references.
- As warranted, XXX may increase or decrease the quantities. More than one award may be made.
- The winner will be notified by DATE.

## Bid Specifications & General Requirements

Commodities: Twenty-one (21) LG A6CG3VF1 Split Air Conditioners or comparable model with key features such as on/off timer, sleep mode, auto clean, deodorizer, anti-bacteria filter, 4 way swing, large digital display and jet cool.

### Technical Specifications

Cooling	6300 watt
Compressor	Rotary
Power Supply (volt/phase/Hz)	230/single/50
Power input (watts)	2250
Running Current (amps)	10.3
Capacity (ton)	2.0
EER (W/W)	2.8
Star Rating	3
Air circulation (in/out/CFM)	530/1600
Noise Level (indoor) (db)	42
Remote Control	Flap LCD
Anti-Bacteria Filter	Yes
De-odorizing Filter	Yes
Auto Air Swing (up-down)	Auto
Auto Air Sing (left-right)	Auto
Speed Setting	4/3
Auto Restart	Yes
Sleep mode	Yes
Nigh Glow Buttons on Remote	Yes
Evaporator Fin Type	Blue
Condenser Fin Type	Gold
Indoor dimensions	1090x300x197
Outdoor dimensions	870x655x322
Indoor net weight	13
Outdoor net weight	54

*\* Terms of warranty must be clearly specified. The bid must include validity of quote (minimum of 60 days) as well as all banking and payment information, and separate shipping costs to XXX, Arkansas.*

**STATEMENT OF CERTIFICATION**  
**REGARDING DEBARMENT AND SUSPENSION STATUS**

\_\_\_\_\_ certifies to the best of its knowledge and belief that it and its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause of default.

\_\_\_\_\_ affirms the truthfulness and accuracy of the contents of the statements submitted on this certification.

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Title of Authorized Official      Date

Annex 3. Bid Tabulation and Recommendation

(Organization/Project Name)

Date: Month, Day, Year

Bid Evaluation Commission Minutes on Selection of a supplier of (Equipment)  
For (Project) in (City), Arkansas

Bid evaluation commission members:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

As a result of solicitation for bids for XXXX bid tenders from the potential bidders based on the advertisement conducted on (Month, Day, Year) for procurement of (equipment/service) for (Company) project in (City, State). All price proposals were reviewed by the bid evaluation commission members on (Month, Day, Year) at (local time) in (City, State). The detailed information about bidders is given in the below table.

Company	Business Type	Nationality/ Source/ Origin	Business activities and experience	Items	USD		Validity of proposed prices	Delivery period	Payment terms
					price per unit	Total price			
				Notes:					
				Notes:					
				Notes:					

Based on the analyses of the above information, it is recommended to select *(company name)*, to supply XXXXXXXX and sign a contract of a total amount of \$\_\_\_\_\_ due to the following reasons:

*(Sample Reasons)*

1. The most cost effective bid.
2. Source, origin and nationality criteria are met.
3. License for rendering the services is available.

Total amount is: \$ \_\_\_\_\_

**Signatures:**

(Bid Committee Member)

\_\_\_\_\_

(Bid Committee Member)

\_\_\_\_\_

(Bid Committee Member)

\_\_\_\_\_

(Bid Committee Member)

\_\_\_\_\_



**Insert Logo Here**

**eREQUISITION**

Date

Please check origination location

Headquarters

Other Locations

Contact:

Contact:

Vendor

Ship To

Quote Number

Special Instructions

Item	Description	Quantity	Unit Price	Amount
<b>Comments:</b>    			<b>Sub-total</b>	
			<b>Grand Total</b>	

Project Number

Originator

Task Number

Approved

GL Acct Number

Purchase Order Number



# PURCHASE AGREEMENT

**NAME**

ADDRESS  
 Phone: (XXX) XXX-XXXX  
 Fax: (XXX) XXX-XXXX

<b>ORDER DATE</b>	<b>PURCHASE ORDER NO.</b>

**SELLER:**

**SHIP TO:**

(NAME) hereby orders from the Seller named above ("Seller"), subject to the terms and conditions of sale set forth on this page (the "Order Page") and the Terms and Conditions set forth on the pages that follow (collectively, the "Agreement"), the following described equipment (the "Products"):

PRIORITY RATING	DELIVERY DATE	PAYMENT TERMS <small>See Section 2 of the Terms and Conditions</small>	SHIP VIA	ORDER NO.	TAXABLE	
					YES	NO
QTY	ITEM NO.	DESCRIPTION			UNIT PRICE	AMOUNT

**OTHER TERMS (including any Services to be provided relating to the Products)**

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Freight/Insurance \_\_\_\_\_  
 Sales Tax/Duty (if applies) \_\_\_\_\_  
**Total Purchase Price** \_\_\_\_\_

Seller hereby acknowledges receipt of, and accepts and confirms, NAME order that is described on this Order Page and accepts all of the terms stated on this Order Page and all of the Terms and Conditions of Purchase printed on the pages that follow this Order Page, all of which are specifically incorporated by reference into this Purchase Agreement (the "Agreement"), constitute the sole terms and conditions of this Agreement, and constitute a binding contract between NAME and Seller.

**Less Deposit** \_\_\_\_\_  
  
**Balance Due** \_\_\_\_\_

**Accepted by Seller**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Terms and Conditions of Purchase

**1. Offer; Acceptance; Modification.** Until accepted, the order described on the Order Page of this Agreement (this "Order") constitutes an offer by NAME to the Seller identified on the Order Page of this Agreement ("Seller") and shall not be binding on NAME until accepted by Seller in writing or by delivery of the Products described on the Order Page (including, without limitation, new material, components, intermediate assemblies, and other like supplies, all of which will be referred to in this Agreement collectively as the "Goods") or by rendering the Services described on the Order Page. Upon acceptance by Seller, these Terms and Conditions, along with all terms set forth on the Order Page of this Agreement, will constitute an agreement between NAME and Seller with respect to the transaction described on the Order Page of this Agreement. ANY TERMS AND CONDITIONS (ORAL OR WRITTEN) THAT DIFFER FROM OR ARE IN ADDITION TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, WHETHER OR NOT SUCH DIFFERING OR ADDITIONAL TERMS AND CONDITIONS MATERIALLY ALTER THE TERMS AND CONDITIONS IN THIS AGREEMENT, ARE HEREBY OBJECTED TO BY NAME AND WAIVED BY SELLER. NO MODIFICATIONS PROPOSED BY SELLER WILL BECOME PART OF THIS AGREEMENT OR BINDING UPON NAME UNLESS THEY ARE ACCEPTED IN WRITING BY AN AUTHORIZED NAME REPRESENTATIVE. IF ANY CONTRACTUAL TERMS BETWEEN NAME AND SELLER ARE DEEMED TO BE ESTABLISHED THROUGH PERFORMANCE OR OTHER CONDUCT OF THE PARTIES, ONLY SUCH CONTRACTUAL TERMS THAT ARE CONSISTENT WITH THE TERMS OF THE ORDER PAGE OR THESE TERMS AND CONDITIONS WILL BE VALID AND ENFORCEABLE AND ANY INCONSISTENT TERMS WILL BE SUPERSEDED BY THE TERMS OF THE ORDER PAGE AND THESE TERMS AND CONDITIONS.

**2. Payment And Setoff.** After deduction of the Deposit specified on the Order Page, payment of the balance of the Purchase Price for the Goods, as indicated on the Order Page, and all related costs and charges (collectively, the "Invoice Amount") will be due and payable and will be paid by NAME to Seller, no later than thirty (30) days after the date NAME receives a proper invoice after shipment. Seller shall include on each invoice the purchase order number and the location of the destination facility. NAME may setoff any amount due from Seller to NAME, whether or not under this Order, from any amounts due to Seller under this Order.

**3. Delivery.** Time is the essence of this Agreement. Delivery and performance must be affected within the time and in the quantities specified on the Order Page of this Agreement; 100% on-time delivery is required. If no delivery date is specified, then delivery will be required within a reasonable time. Unless expressly specified, delivery may not be made in installments. If Seller's delivery is not timely for other than an excusable delay, NAME may, without limiting its other rights or remedies, direct expedited production scheduling and routing and Seller will pay any additional costs incurred and mutually agreed by NAME and Seller. Alternatively, NAME may exercise its right to terminate pursuant to Section 11 of this Agreement and any part of or the entire Order in the event, (i) Seller fails to make timely delivery of any or all of the Products ordered, including without limitation, new material, components, intermediate assemblies and other like supplies (collectively, the "Goods"), (ii) Seller fails to perform the Services described on the Order Page, or (iii) Seller's performance, in NAME opinion, substantially jeopardizes the timely completion of this Order. If Seller delivers Goods in advance of the specified delivery date, NAME may withhold payment for such deliveries until the date upon which the Goods were actually scheduled for delivery or store the Goods at Seller's expense until such specified delivery date. NAME shall have no liability for payment for Goods or other materials or items delivered to NAME that are in excess of the quantities specified on the Order Page. NAME may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments.

**4. Inspection; Rejection.** All Goods ordered will be subject to inspection and test by NAME at times and places deemed necessary by NAME and all Goods will be subject to inspection and acceptance by NAME after delivery to NAME. Inspections and payments made by NAME prior to delivery will not constitute acceptance.

If Goods do not meet the Specifications provided by NAME to Seller (as provided in Section 8(b)) or otherwise do not conform with the requirements of this Order, NAME will have the right to reject such Goods. Goods rejected after delivery, at NAME option, may be returned to Seller for reimbursement, credit, replacement, or correction at Seller's expense or NAME may correct or replace such Goods at the Seller's expense. Any Goods rejected and returned to Seller will not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed to NAME. Packaging, handling, and transportation costs relating to return and re-delivery of rejected Goods will be paid for by Seller.

Seller shall maintain adequate inspection and text reports, affidavits, certifications, and other documents that relate to the Goods and Services to be provided under this Order. Such documents will be available upon request to NAME three (3) years after completion of this Order.

NAME and/or its designee may inspect and evaluate all Goods (including all tooling and materials used in their manufacture) and all Services at times and places designated by NAME. Notwithstanding payment or any prior inspection, NAME may reject, require correction, or return to Seller (at Seller's expense and risk of loss) any Goods delivered or Services rendered that do not conform to NAME Specifications or that do not otherwise conform with the requirements of this Order. Without limiting its remedies, after notice to Seller, NAME may either (i) replace or correct any nonconforming Goods or Services and charge Seller the cost of such replacement or correction, or (ii) cancel this Order for default under Section 11.

**5. Changes.** Buyer may, at any time, by a written Order, make changes in any of the following: (a) Specifications to the extent that the Goods are to be specially manufactured for NAME in accordance with Specifications; (b) method of shipment or packing; and (c) place of delivery and delivery schedule. Seller shall promptly comply with such change(s).

If any change(s) made by NAME cause an increase or decrease in the cost of, or the time required for performance under this Order, an equitable adjustment will be made in the Purchase Price or delivery schedule or both and this Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Section 5 must be asserted within fifteen (15) days after the date of receipt of NAME notice of change unless NAME such requirements in writing. Failure by Seller to assert a claim for adjustment within the fifteen (15) day period constitutes a waiver of Seller's right to assert or pursue such claim. NAME may verify all properly asserted Purchase Price adjustment claims by auditing relevant records, facilities, work, or materials of Seller. Failure to agree on any properly asserted claim for an equitable adjustment under this Section 5 will be a dispute and either party may pursue any remedy that it may have in any court of competent jurisdiction. Pending the resolution of any such dispute, Seller will diligently pursue the performance of this Order as changed.

**6. Packing; Marking; Shipment.** Seller shall pack and mark the Goods in accordance with NAME instructions, meet carrier requirements, and assure delivery free of damage and deterioration. THIS AGREEMENT IS GOVERNED BY INCOTERMS 2000. Delivery of the Goods will be DDP at the destination specified on the Order Page. Seller shall be responsible for, and assume all risk of loss with respect to, the Goods until delivery at the designated DDP point. Seller shall reimburse NAME for all expenses incurred by NAME as a result of improper packing, marking, routing, or shipment. The Purchase Price includes all charges and expenses for containers, packing, and crating, and transportation to the DDP point. All containers and packing and crating material shall become the property of NAME upon delivery. NAME may specify the carrier and/or method of transportation and Seller shall process shipping documents and route shipment of the Goods to the DDP point accordingly. NAME may require shipment of any Goods by a more expeditious method of transportation in the event of Seller's failure to meet the shipping requirements of this Agreement or shipping releases issued under this Agreement and Seller shall bear the cost difference of such transportation unless such failure is due to an excusable delay under Section 9.

**7. Bill Of Lading; Packing Slips.** Seller shall obtain a straight bill of lading from the carrier of the Goods and shall include on each packing slip and bill of lading the Purchase Order number and location of the destination facility. Seller shall include a numbered NAME packing slip with each shipment. If less than a carload or truckload is being shipped, the slip shall be included in one of the packages, which shall be marked "Packing Slip Inside." In carload and truckload shipments, the NAME packing slip shall be enclosed in an unsealed envelope that is affixed near the door on the inside of the freight vehicle. Seller shall retain the original bill of lading for three (3) years from the date of the shipment unless directed otherwise by an appropriate NAME representative. If NAME determines that the Goods may contain potentially harmful chemicals or other ingredients, Seller shall promptly furnish to NAME (i) upon written request, a list of all ingredients contained in the Goods and, as necessary, the composition and amounts of one or more such ingredients and (ii) thereafter, information concerning any changes in such ingredients.

**8. Proprietary Rights.** (a) Seller shall not, without NAME prior written consent, in any manner publish or disclose the fact that Seller has furnished or contracted to furnish the Products and/or Services to NAME or use the name or trademarks of NAME, its products, or any of its affiliated organizations in Seller's advertising or other publications, or in any of Seller's products or services. If any Products specified on the Order Page are manufactured to NAME Specifications (as defined in Section 8(b)), then such Products shall not be sold to anyone other than NAME.

(b) Any specifications, drawings, designs, manufacturing or other data, samples, and other information transmitted to Seller by NAME in connection with the performance of this Agreement (collectively, "Specifications") are the sole property of NAME and may be covered by copyrights. Seller shall hold all Specifications confidential and shall not disclose any of them or use any of them for any purpose other than for the performance of this Agreement without NAME prior written consent. All technical, industrial, and commercial information and material that Seller discloses to NAME before or after the date of this Agreement is disclosed on a nonconfidential basis.

(c) No rights are granted to Seller under the Specifications or under any NAME copyright, trademark, or know-how, or other intellectual property rights except as may be necessary to fulfill Seller's obligations under this Agreement or as may be specifically granted by NAME in writing. Seller shall not assert any copyright or trademark rights and privileges against NAME.

**9. Excusable Delays.** Neither NAME nor Seller shall be liable for any failure to perform that arises from causes or events beyond the party's reasonable control and without the party's fault or negligence ("force majeure event"), including labor disputes. In the event that a force majeure event delays performance, NAME may (i) require Seller to specify the expected duration of the force majeure event, (ii) suspend Seller's performance obligations under this Agreement, and (iii) acquire possession of all finished Goods and, upon NAME's request, Seller shall deliver such Goods to NAME DDP at the destination specified on the Order Page, with an appropriate adjustment of the Purchase Price based upon the number of Goods delivered.

**10. Termination At NAME Option.** NAME may, at any time and from time to time, for any reason whatsoever, whether or not Seller is in default, terminate this Agreement in whole or in part by written notice to Seller. Upon receipt of such termination notice, Seller, unless otherwise directed by NAME shall stop work on the date of receipt of the termination notice and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated Agreement. In the event this Agreement is terminated by NAME for reasons other than a default by Seller with respect to its obligations under this Agreement, as provided in Section 11, NAME's sole obligation to Seller shall be to pay to Seller the Purchase Price for all finished Goods and completed Services that conform to the requirements of this Agreement, to be delivered in accordance with this Agreement. NAME shall have no liability to Seller other than for payment of delivered Goods in accordance with this Agreement.

**11. Cancellation For Default.** If Seller: (i) fails to deliver the Goods or perform the Services at the time or manner specified in this Agreement, (ii) fails to perform any other provision contained in this Agreement and does not cure such failure within a period of ten (10) days after receipt of written notice from NAME specifying such failure, (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy, dissolution, or similar proceedings, or (iv) is sold to (or its assets sold to) or merged into another company, NAME may cancel the whole or any part of this Agreement and the Order without any liability, except for payment due for the Goods and Services delivered and accepted by NAME prior to such cancellation.

**12. Taxes.** Except as otherwise required by applicable law, Seller shall not include in its Purchase Price, nor otherwise charge or assess to NAME, any sales, use, excise, or other taxes or assessments of any jurisdiction on the Goods or Services or the sale of the Goods or Services under this Agreement.

**13. Duty Drawback Rights.** This Agreement includes all related customs duty and import drawback rights, if any (including rights developed by substitution and rights that may be acquired from Seller's suppliers), that Seller can transfer to NAME. Seller shall inform NAME promptly of any such rights and supply documents as may be required to obtain any such drawback.

**14. Prices.** Seller warrants that its prices for the Goods or Services under this Agreement are no less favorable than those that Seller currently extends to any other customer for the same or similar Goods or Services in similar quantities. If Seller reduces its prices to others during the term of this Agreement, Seller shall reduce the prices to NAME for such Goods or Services correspondingly. Seller warrants that prices shown on this Agreement are complete, and that no additional charges of any type will be added without NAME express written consent.

**15. Claims Adjustment.** NAME may at any time and without notice deduct or set-off against Seller's claims for money due, or to become due, from NAME the amount of any claims that NAME has or may have arising out of this or any other transaction between NAME and Seller.

**16. Warranty.** Seller warrants that the Goods and Services shall (i) comply with all Specifications, (ii) be merchantable, (iii) be free from defects, and (iv) be of good material and workmanship. Seller further warrants that all Goods will be fit and sufficient for the purposes intended. Seller further warrants that on delivery, NAME will receive good title to the Goods and Services, free and clear of all liens and encumbrances, and that all Goods and Services will be free from any actual or claimed patent, copyright, or trademark infringement. These warranties are in addition to any warranties required or implied by law or otherwise made by Seller (or customarily made by Seller) or that are made by the manufacturer of the Goods and all warranties shall survive acceptance and payment by NAME.

**17. Insurance; Indemnification.** Upon request, Seller shall furnish evidence acceptable to NAME of adequate comprehensive general liability, products liability, automobile, and other public liability and property damage insurance coverage in amounts and coverage's sufficient to cover all claims under this Agreement. Notwithstanding the purchase or reimbursement of expenses by such insurance policies, Seller shall defend, indemnify, and hold NAME harmless against all claims, liabilities, losses, damages, fees, fines, penalties, assessments, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs of defense and costs associated with the enforcement of this indemnification) arising out of or relating to the Goods, the Services, any breach or violation of this Agreement, or injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission, strict liability, fault, or negligence of Seller or anyone acting under its direction, control, or on its behalf in connection with performing this Agreement.

**18. Labor Disputes.** Seller will notify NAME immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of this Agreement, and shall include all relevant information to NAME.

**19. Compliance With Laws.** Seller shall comply with any and all applicable laws and all rules and regulations promulgated under such laws (collectively, "Laws") in connection with all performance under this Agreement. Seller shall defend, indemnify, and hold NAME harmless from and against any and all claims, losses, damages, costs, and expenses resulting from or arising out of any failure of Seller or Seller's employees, agents, or subcontractors to comply with any applicable Laws. This indemnification obligation is in addition to any other indemnification obligations that Seller may have under this Agreement, including those set forth in Section 17.

**20. Remedies.** The rights and remedies in this Agreement that are reserved to NAME are cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or a waiver of such provision.

**21. Assignment.** This Agreement may not be assigned, subcontracted, or delegated by Seller, in whole or in part, without NAME prior written consent.

**22. Applicable Law.** This Agreement, its construction, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort claims), will be governed by the laws of the State of Arkansas, United States of America, without regard to its conflict of laws principles. The rights and obligations of the parties to this Agreement will not be governed by the provisions of the 1980 UN Convention on Contracts for the International Sale of Goods; rather these rights and obligations will be governed by the laws of the State of Arkansas.

**23. Severability Of Terms.** If any of these Terms and Conditions are held to contravene any applicable law, only such contravening provision will be deemed void or unenforceable, and in all other respects these Terms and Conditions will remain in full force and effect.

**24. Entire Agreement.** This Agreement, including these Terms and Conditions, and the Order to which they relate, set forth the entire agreement between the parties and supersede all communications, representations, or agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

**25. U.S. Export Control Laws.** Seller shall at all times comply fully with all United States export control laws and regulations as they apply to any Goods, software, or information, or the direct product of such information, provided under this Agreement. Seller shall not at any time sell, deliver, or divert any Goods other than in strict compliance with all applicable U.S. export control laws and regulations.

**26. Terrorist Financing.** Vendor acknowledges that US Executive Order 13224 and US law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the vendor to ensure compliance.

## Annex 7. Supply and Installation Contract

### CONSTRUCTION AGREEMENT

**This Agreement** is made and entered into by and between **NAME**, a nonprofit corporation organized under the laws of the State of Arkansas, USA, and duly licensed to operate in \_\_\_\_\_, with its principal offices located at ADDRESS (referred to in this Agreement as " "), and \_\_\_\_\_, a corporation duly organized and existing under the laws of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (referred to in this Agreement as "Contractor") (NAME and Contractor are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties"), under the following circumstances:

A. NAME is implementing \_\_\_\_\_, a \_\_\_\_\_-month Cooperative Program (the "Program") with the FUNDER, in partnership with \_\_\_\_\_.

B. Contractor desires to be retained to complete the construction project associated with the Program that is described in this Agreement (the "Project") and has reviewed the Contract Documents (as defined below) that relate to the Project, has inspected the Project Site (as defined below), and understands the scope of the Contract Work.

C. In order to induce NAME to retain Contractor, Contractor has provided to NAME a proposal relating to the Project and has made representations to NAME that Contractor has the technical competence, qualifications, personnel, resources, and licenses to perform all of the work associated with the Project (the "Contract Work") and to complete the Project as provided in this Agreement.

D. Based upon Contractor's proposal and representations, NAME is willing to retain Contractor to perform the Contract Work and to complete the Project under the terms, conditions, and specifications set forth in this Agreement.

**Therefore**, for and in consideration of the premises set forth above and the mutual covenants and conditions contained in this Agreement, and other good and valuable considerations, the Parties mutually agree as follows:

1. **Definitions.** Whenever used in this Agreement and in the Contract Documents, the following words and expressions will have the meanings ascribed to them below (except where the context requires otherwise). Other defined terms may be defined elsewhere in this Agreement.

(a) "Acceptance Date" means the date on which NAME notifies Contractor that the Contract Work has been completed and accepted by NAME, as provided in Section 3.

(b) "Agreement" means this contract, as described in the first paragraph above.

(c) "Claims" means any and all claims, actions, lawsuits, liability, damages, fines, penalties, assessments, costs, and expenses of any kind or character, including, without limitation, reasonable attorney fees and all court costs, costs of investigation, amounts paid under judgments or in connection with settlements, and other costs and expenses associated with the same.

(d) "Completion Date" means the date by which the Contract Work is to be completed, as provided in the Construction Schedule.

(e) "Construction Schedule" means the schedule for completion of the Project that is attached as Appendix A.

(f) "Contract Documents" means the Construction Schedule, the Drawings, the Statement of Work, and the Specifications, each of which is incorporated into and made a part of this Agreement as if fully written in this Agreement.

(g) "Contract Price" means the total amount payable to Contractor for all work completed with respect to the Project, as provided in Section 4.

- (h) "Contract Work" means the work to be performed and/or supplies or materials to be provided by Contractor, as set forth in the SOW.
- (i) "Contractor" means \_\_\_\_\_, its legal successors and permitted assigns, as provided in this Agreement.
- (j) "Drawings" means the graphic and pictorial materials that reflect the Contract Work and the Project and are attached as Appendix B.
- (k) "Laws" means all statutes, laws, ordinances, regulations, and rules applicable to or relating to the conduct of Contractor's business and to the performance of the Contract Work, and all of Contractor's other duties, responsibilities, and obligations under this Agreement.
- (l) "Project Site" means the location or locations at which the Contract Work will be performed, as set forth in the SOW.
- (m) "SOW" means the Statement of Work relating to the Project that is attached as Appendix C.
- (n) "Specifications" means the specifications for the Contract Work that are attached as Appendix D. Specifications include, without limitation, requirements relating to the workmanship, materials, equipment, methodology, installation, and the performance of the Contract Work to be completed by Contractor with respect to the Project.
- (o) "Subcontractor" means any subcontractor, manufacturer, vendor, supplier, material man, engineer, or similar entity or person who has a contract or other arrangement with Contractor to perform or provide any part of the Contract Work, as permitted by Section 7.
- (p) "Warranty" means Contractor's warranty relating to the Contract Work, as provided in Section 10.
- (q) "Warranty Claim" means a claim for repair, replacement, or re-performance of any aspect of the Contract Work, as provided in Section 10.
- (r) "Warranty Period" means the two (2) year period ending on the second anniversary date of the Acceptance Date.
- (s) "NAME" means NAME, its assignees, or legal successors, but not any other party, including any NAME Affiliate.
- (t) "NAME Affiliate" means any organization that is affiliated with NAME
- (u) "NAME Indemnified Parties" means NAME, its successors and assigns, any NAME Affiliate, and the directors, officers, representatives, agents, and employees of each of them and "NAME Indemnified Party" means each one of them.

## 2. Contractor's Obligations and Responsibilities.

- (a) Contractor will be responsible for completing all of the Contract Work in accordance with this Agreement, including all of the Contract Documents. Contractor will supply all equipment, personnel, tools, expertise, labor, supervision, and all other items necessary to successfully perform the Contract Work and to complete the Project in accordance with the SOW, the Drawings, the Construction Schedule, and the Specifications. Any equipment, personnel, tools, expertise, labor, supervision, and other items not specifically mentioned in this Agreement or the Contract Documents but that are necessary to complete the Contract Work in a proper and workmanlike manner will be furnished by Contractor without extra charge or cost to NAME.

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

(b) Contractor will at all times furnish an adequate supply of workers and materials and perform and complete the Contract Work in the best and highest quality way and in the most expeditious and economical manner consistent with good construction practices. Contractor will be solely responsible to select, qualify, and contract with all Subcontractors (approved by NAME in accordance with Section 7) and all suppliers for the Contract Work and Contractor will be fully responsible for all work performed by or materials supplied by such Subcontractors and suppliers. NAME will be a third-party beneficiary of all subcontracts for the Project. All labor will be performed in the best workmanlike manner by workers skilled in their respective trades and properly trained for the work that they will be performing. Contractor will only employ and permit the use of such labor as will not result in jurisdictional disputes or strikes. Any worker or other person involved in the performance of the Contract Work who, in the opinion of NAME, is incompetent, careless, disorderly, abusive, dangerous, insubordinate, underage, or is otherwise unsatisfactory or who in any way attempts to interfere with the employees of NAME or of other contractors will be immediately removed from the Project and the Project Site by Contractor upon request of NAME. Such right or the exercise of such right on the part of NAME will not affect in any way Contractor's duties and responsibilities with respect to all workers and Subcontractors as provided in this Agreement.

(c) All materials used in connection with the Contract Work will be new and of the best quality of the kind specified in the Contract Documents unless otherwise approved in writing by NAME. Contractor will supervise all work, whether performed by Contractor or by Subcontractors.

(d) Contractor will obtain all permits and licenses and pay all fees required by all Laws necessary to permit Contractor to lawfully perform and complete the Contract Work and the Project and for NAME to lawfully possess and occupy any structures associated with the Project upon the completion of the Contract Work.

(e) Contractor will provide, pay for, and maintain all materials, tools, apparatus, machinery, construction and other equipment, and all utilities, transportation, and other facilities and service necessary for the proper and safe execution and completion of the Contract Work and the Project.

(f) Contractor will at all times keep the Project Site free from any accumulation of rubbish, debris, scrap, and waste. Upon completion of the Project and prior to final payment by NAME, Contractor will, at its sole expense, (i) remove all of Contractor's equipment, supplies, and storage units, office facilities, and other items that belong to Contractor and, to the extent necessary, items that belong to Subcontractors and others, and that are not part of the Project and (ii) thoroughly clean all work, remedy any defects, and leave those portions of the Project Site in which Contractor or its Subcontractors worked in a clean and orderly condition. In the event that Contractor fails to clean and leave the Project Site in a condition that is satisfactory to NAME, NAME may, but will not be obligated to, have the Project Site cleaned or otherwise remedied and Contractor will be responsible to pay to NAME the full cost of such work, which amount may be deducted from any amounts owing to Contractor.

(g) Contractor will be responsible for all necessary safety precautions and programs in connection with the Contract Work and the Project, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether employees of Contractor, Subcontractors, or others who may be present at the Project Site, or to prevent loss or damage to property of NAME or other persons, including all materials, supplies, and equipment to be incorporated into the Contract Work and all existing improvements that are not to be removed as part of the Contract Work.

### 3. Commencement and Completion of the Project.

(a) Subject to the provisions of Section 6, Contractor will commence and complete the Contract Work and the Project in accordance with the Construction Schedule. The Contract Work will be deemed to be completed when NAME notifies Contractor in writing that it accepts the Contract Work following a joint inspection of the Contract Work by NAME and Contractor and the completion of any items that NAME includes on a punch list and delivers to Contractor following such inspection (the "Punch list"). No other delivery of the Project to NAME or possession or occupancy of the Project Site will constitute acceptance by NAME of the Contract Work.

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

(b) Contractor acknowledges and agrees that (i) time is of the essence with respect to Contractor's obligations and responsibilities under this Agreement and (ii) NAME will suffer damage if the Project is not completed on or before the Completion Date. Accordingly, Contractor agrees to prosecute the Contract Work with all due diligence and to provide sufficient workers and supervisors and sufficient construction equipment, tools, resources, and facilities to perform the Contract Work at the rate of progress set forth in the Construction Schedule so that the Project will be completed no later than the Completion Date. Any failure by Contractor to complete the Contract Work by the Completion Date will be deemed a material breach of this Agreement by Contractor.

(c) Because it will be difficult to determine the actual amount of damages that NAME will incur as a result of such breach by Contractor, in the event that Contractor has not completed the Contract Work on or before the Completion Date, Contractor will pay to NAME liquidated damages in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_) per day for each day after the Completion Date that the Contract Work is not completed and accepted by NAME. NAME will have the right to offset any amounts otherwise owing to Contractor by the amount of such liquidated damages. The Parties agree that the liquidated damages provided in this Section 3(c) is not a penalty but is a reasonable estimation of NAME's actual damages and losses in the event Contractor fails to complete the Contract Work by the Completion Date. Any such amount will be deducted from the balance, if any, due Contractor or will be paid by Contractor directly to NAME immediately upon notice of such amount from NAME if there is no outstanding balance. The liquidated damages set forth in this Section 3(b) are intended solely for failure of Contractor to complete the Contract Work by the Completion Date and are not applicable to, or in lieu of actual damages for, any other breach of contract by Contractor, or applicable to other causes of action accruing to NAME. This Section 3(c) will survive the expiration or termination of this Agreement.

(d) In the event that Contractor fails to prosecute the Contract Work at a pace that is reasonable for the completion of the Contract Work on or before the Completion Date, NAME may notify Contractor in writing of such determination of non-compliance and Contractor will have five (5) days after receipt of such notice in which to correct the non-compliance, or such greater amount of time as NAME may agree to, in its sole discretion. In the event that, within the amount of time established by NAME, Contractor is not on schedule to complete the Contract Work by the Completion Date, NAME may immediately terminate this Agreement without further obligation to Contractor, Contractor will be liable to NAME for breach of this Agreement, and Contractor will pay to NAME the amount of damages that NAME incurs after another contractor is retained to replace Contractor for the purpose of completing the Contract Work, including any increase in the amount of payable to such other contractor to complete the Contract Work. NAME will have the right to offset any amounts otherwise owing to Contractor by the amount of such damages. This Section 3(d) will survive the expiration or termination of this Agreement.

(e) Notwithstanding anything in this Section 3 to the contrary, neither Party will be deemed to be in default of the terms of this Agreement for any failure or delay in performance of any of its obligations under this Agreement that is caused by acts of God, acts of civil or military authority, actions or decrees of governmental bodies, civil disturbances, wars, riots, acts of public enemies, natural disasters (including fire, earthquakes, and floods), epidemics, or other like occurrences if the same are beyond such Party's control and without its fault or negligence (a "Force Majeure Event"). In the event either Party expects or experiences a Force Majeure Event, it will give prompt written notice to the other Party of such delay and the Force Majeure Event that has caused the delay and will take reasonable actions to mitigate the effect of the delay on the other Party. If a Force Majeure Event lasts more than thirty (30) days, the Party whose performance has not been impaired on account of the Force Majeure Event may, at its option, terminate this Agreement without further liability of either Party to the other for claims that were caused by the Force Majeure Event.

#### 4. Contract Price.

(a) As consideration for the full and faithful performance and accomplishment of all the Contract Work, and subject to NAME's rights of setoff provided in this Agreement, NAME will pay Contractor the total amount of \_\_\_\_\_ (\$\_\_\_\_\_). The Contract Price is a fixed amount that is not subject to escalation for any

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

reason, except as provided in Section 6. NAME will withhold the appropriate withholding tax from the Contract Price and remit the same to the appropriate authority for the account of Contractor.

(b) The Contract Price will be paid as follows:

(i) The first (1<sup>st</sup>) payment of \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price will be paid \_\_\_\_ (\_\_) business days after the signing of this Agreement by both NAME and Contractor.

(ii) The second (2<sup>nd</sup>) payment of \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price will be paid \_\_\_\_ (\_\_) business days after presentation by Contractor to NAME of the second original copy of shipping documents with respect to all materials and supplies that are necessary for the completion of the Contract Work and the Project and that have been delivered to the Project Site.

(iii) The third (3<sup>rd</sup>) payment of \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price will be paid \_\_\_\_ (\_\_) business days after Contractor delivers to NAME evidence of Contractor's commissioning of major equipment.

(iv) The final payment of \_\_\_\_ percent (\_\_\_\_%) retention will be paid thirty (30) days after the occurrence of all of the following:

(1) Completion of all Contract Work as approved by NAME, including rectification work described on any Punch list prepared by NAME and delivered to Contractor, as provided in Section 3;

(2) Issuance of the Certificate of Completion by the Area Manager/Technical Head of the Project;

(3) Written proof and certification to NAME's satisfaction that full and final payment has been made by Contractor to each of its Subcontractors (if any), laborers, and any other party that provided goods, materials, equipment, supplies, tools, labor, or services in connection with the Contract Work and lien releases from all such Subcontractors, laborers, and other parties have been delivered to NAME;

(4) Consent of any surety to final payment;

(5) Delivery to NAME of the Guarantee Bond provided in accordance with Section 9(b); and

(6) Any other information or documents requested by NAME to ensure that its interests in the Project are adequately secured and protected.

(c) Acceptance by Contractor of final payment will constitute a general release of NAME by Contractor and a waiver of all claims of Contractor for all things done and furnished in connection with the Contract Work, the Project, or otherwise and of any act of omission or neglect of NAME and its employees, agents, and contractors affecting, relating to, or arising out of the Contract Work, the Project, or this Agreement. No payments, final or otherwise, will operate to release Contractor from any of his obligations under this Agreement, including, but not limited to, responsibility for Warranty claims.

(d) NAME will at all times have the right to offset against any amounts owing to Contractor, under this Agreement or otherwise, any amount that is owed by Contractor to NAME, as a result of a claim for indemnification under Section 12 or otherwise as provided under any other provision of this Agreement. Any such offset will be effective as of the date NAME suffered the loss or damage or incurred the cost or expense giving rise to the obligation by Contractor. Notwithstanding anything in this Agreement to the contrary, NAME may withhold any payment otherwise payable to Contractor, in whole or in part, to such extent as may be necessary, in NAME's opinion, to protect NAME from any loss, liability, or expense, including but not limited to those arising from the following causes:

(i) Defective or non-conforming work not remedied;

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

- (ii) Claims or liens filed or reasonable evidence indicating the probable filing of claims or liens in connection with the Contract Work;
- (iii) Failure of Contractor to make payments properly to Subcontractors or for materials or labor;
- (iv) A reasonable doubt that the Contract Work can be completed for the balance of the amount to be paid under this Agreement or by the Completion Date;
- (v) Damage to another contractor;
- (vi) Failure of Contractor or any subcontractor or material man to deliver to NAME a Contractor's or subcontractor's lien waiver prior to the expiration of the lien period applicable to the work for which such waiver should have been issued; and
- (vii) Failure of Contractor to observe or perform any of the terms, covenants, and conditions of this Agreement.

NAME may (1) hold any such amount until Contractor has resolved the matter giving rise to the withholding so as to completely discharge any liability of NAME or (2) exercise its right of setoff and apply any such amount to discharge any such liability of NAME or apply any such amount to any liability or expense incurred by NAME. No such application of any amount withheld by NAME will discharge or affect in any way any liability of Contractor to NAME under the terms of this Agreement (except for the amount of such liability as reduced by the amount applied by NAME). This Section 4(d) will survive the expiration or termination of this Agreement.

5. **Specifications and Drawings.** Contractor will be responsible for carefully reviewing all Contract Documents to ensure that Contractor is able to complete all Contract Work in accordance with the Contract Documents and that there are no apparent inconsistencies in the Specifications and Drawings. In the event Contractor believes that it has discovered any requirements in the Contract Documents that appear inconsistent or uncertain, Contractor will provide a written description of such purported inconsistencies or uncertainties to NAME and NAME, within five (5) business days after receipt of such description, will render a decision as to the resolution of any such issues. The decision of NAME will be final. Contractor will continue with any Contract Work that is not involved with the purported inconsistencies or uncertainties identified by Contractor and the Construction Schedule will not be affected by the submission by Contractor of the written description to NAME.

6. **Change Orders.**

(a) NAME may at any time make changes in the Contract Documents and the Contract Work that do not affect in a material way the liabilities or undertakings of Contractor under this Agreement or the Contract Documents. Any such change that does not result in a material change of cost to Contractor will be incorporated into the applicable Contract Documents without a revision to the Contract Price. Any change that is not reasonably expected to result in a material modification of the time required by Contractor to complete the Contract Work will not affect the Construction Schedule.

(b) In the event that any change in the Contract Work that is requested by NAME results in a material change in the direct cost that Contractor must incur because of the change, the Contract Price will be adjusted to reflect the amount of the cost to Contractor that is associated with the requested change. In the event that any change in the Contract Work that is requested by NAME is reasonably expected to result in a material modification of the time required by Contractor to complete the Contract Work, the Construction Schedule will be adjusted to reflect the amount of such time. Any adjustments to the Contract Price or the Construction Schedule will be reduced to writing and signed by an authorized representative of NAME and Contractor. No adjustment to the Contract Price or to the Construction Schedule will be effective without such a signed writing.

(c) Contractor may at any time request a change in the Contract Work based upon any new and unanticipated information concerning the Project. Such request will include a description of the change, the reason that the change is necessary, any adjustment to the Contract Price being requested by Contractor, and any adjustment to

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

the Construction Schedule being requested by Contractor. No such requested change will be effective unless approved by NAME in writing and only to the extent approved by NAME.

(d) For purposes of this Section 6, (i) a "material change of cost" is a change in the amount that Contractor must spend to provide materials and/or labor in order to complete the change that, in the aggregate, is in excess of five percent (5%) of the total Contract Price before the change and (ii) a "material modification of time" is a change that can reasonably be expected to alter the Construction Schedule by at least one (1) full day.

(e) Except as provided in this Section 6, NAME will have no responsibility to any amount to Contractor for extra work unless the performance of such extra work is first authorized by NAME in accordance with this Section 6. A waiver of this Section 6 by NAME in the case of any extra work being performed by Contractor will not constitute a waiver as to any other requests or instances of extra work.

(f) When requested in writing by NAME, Contractor will perform extra work in its specialty not otherwise described in the SOW, subject to the provisions of Section 6(b).

## 7. Subcontractors.

(a) Contractor will not award or subcontract the whole or any portion of the Contract Work to any Subcontractor without the prior written approval of NAME, which approval may be withheld for any reason.

(b) In the event Contractor obtains NAME's approval to subcontract any part of the Contract Work, Contractor will bind each Subcontractor to the insurance and indemnity provisions specified in this Agreement and any other applicable terms of this Agreement. Contractor will obtain each Subcontractor's written acceptance of such terms and conditions and will require each Subcontractor to assume toward Contractor all of the obligations and responsibilities that Contractor assumes toward NAME under this Agreement, including the Subcontractor retaining any other subcontractors. Regardless of the assumption of obligations by any Subcontractors, Contractor will at all times remain as fully responsible to NAME and any other NAME Indemnified Party for the acts and omissions of Subcontractors and of the persons either directly or indirectly employed or retained by Subcontractors as Contractor is for the acts of the persons directly or indirectly employed by itself.

(c) Contractor will promptly pay each Subcontractor, when due, the amount to which the Subcontractor is entitled on account of the Subcontractor's work. Contractor will, by appropriate agreement with each Subcontractor, require the Subcontractor to make payments to its subcontractors in similar manner. Prior to final payment to Contractor, as provided in Section 4(b), all releases of liens from all mechanics', material men, or other similar lien holders must be provided to NAME. If any mechanics', material men's, or other similar lien is at any time filed in connection with the Contract Work or the Project on account of any work performed on or furnished to or claimed to be performed on or furnished to the Project at the direction of Contractor or any Subcontractor retained by Contractor, Contractor will, upon written request from NAME and without cost or expense to NAME, promptly cause the sum to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If Contractor, having been requested by NAME to discharge such lien, fails to do so within ten (10) days after such written request by NAME, NAME will have the right, but not the obligation, to discharge the same by payment, bond, order of a court of competent jurisdiction, or otherwise and without regard to whether Contractor is disputing the validity or amount of the same, and the costs and expenses incurred by NAME in so discharging such lien will be deducted from any amounts otherwise owing to Contractor by NAME and/or paid by Contractor to NAME within ten (10) days after NAME delivers an invoice for the same to Contractor (including an invoice for any amount in excess of the amount deducted by NAME from amounts otherwise owing to Contractor). This Section 7(c) will survive the expiration or termination of this Agreement.

## 8. Inspections by NAME.

(a) NAME will have the right, but not the obligation, at all times during the Project to inspect the execution of the Contract Work by Contractor and Contractor's workers and Subcontractors and Contractor will at all times permit

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

access by NAME to the Project Site and Contractor's workers and Subcontractors. The purpose of any such inspections will be to determine if Contractor is fulfilling its duties, obligations, and responsibilities under the terms of this Agreement. No such inspection will be construed as an assumption by NAME of any responsibilities with respect to the Contract Work or supervision of Contractor's workers or subcontractors, nor will it relieve Contractor of any of its duties, obligations, or responsibilities under this Agreement.

(b) In the event that NAME determines that any materials, supplies, equipment, or labor being furnished to the Project by Contractor does not comply with any of the Contract Documents, NAME will have the right to suspend any such non-complying work or the installation of any non-complying materials, supplies, or equipment. NAME may notify Contractor in writing of such determination of non-compliance and Contractor will have five (5) business days after receipt of such notice in which to correct the non-compliance, or such greater amount of time as NAME may agree to, in its sole discretion. In the event that Contractor has not corrected the non-compliance as set forth in NAME's notice within the permitted amount of time, NAME may terminate this Agreement without further obligations to Contractor and Contractor will be liable to NAME for breach of this Agreement.

## 9. Bonds and Insurance.

(a) To guarantee the faithful performance of its obligations under this Agreement, Contractor will, within five (5) business days after the execution of this Agreement by both Parties, post a performance security in the form of a surety bond in an amount equivalent to thirty percent (30%) of the Contract Price (the "Performance Bond"), which must be callable on demand and issued in the form, substance, and by a surety/insurance company acceptable to NAME. In addition to NAME's other rights to receive payment of the Performance Bond, the Performance Bond will, at the option of NAME, be payable to NAME in the event Contractor incurs a slippage of more than twenty percent (20%) of the Construction Schedule.

(b) To guarantee that the Contract Work is of good quality in every respect and remains so for the duration of the Warranty Period, Contractor will, within five (5) business days after the execution of this Agreement by both Parties, post a guarantee bond in an amount equivalent to ten percent (10%) of the Contract Price in the form and from a bonding company acceptable to NAME (the "Guarantee Bond").

(c) Contractor will, under its name and at its own expense, obtain and maintain without interruption for the duration of this Agreement the following policies of insurance issued by insurance companies accredited by the applicable insurance commission, providing, at a minimum, the coverage's and limits specified, and complying with the other requirements stated below:

(i) Contractor's all-risk in the amount not less than the Contract Price, including accident policy/rider for Contractor's personnel and equipment and third parties;

(ii) Comprehensive general liability insurance, in an amount not less than one million dollars (\$1,000,000) per person and three million dollars (\$3,000,000) per occurrence, insuring NAME and Contractor against any loss from any liability for damages resulting from personal injury or death to any person and against any loss from any liability for property damage suffered by any person or persons upon the Project Site or otherwise in connection with Contractor's performance of the Contract Work; and

(iii) Workers' compensation coverage for all of Contractors' employees.

(d) Contractor will cause its insurers to issue endorsements to add NAME and its Affiliates, as additional insured's on the policies set forth in Section 9(c) with respect to liability of NAME and/or its Affiliates arising out of the performance of the Contract Work under this Agreement.

(e) Contractor's insurance will be primary insurance with respect to all Contract Work and any insurance of NAME (including self-insurance) will be excess of Contractor's insurance and will not contribute with it. Contractor hereby waives all rights of subrogation against NAME and/or any NAME Affiliates with respect to any claim or loss payable or paid under the insurance policies to be maintained by Contractor under this Agreement.

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

(f) The policy or policies of insurance to be maintained by Contractor under this Section 9 will contain a provision that requires the insurance carrier to notify NAME at least thirty (30) days prior to the effective date of termination, non-renewal, or material change in any such policy. Upon request, Contractor will promptly submit to NAME a Certificate, signed by an authorized representative of the insurance carrier, listing the policies, coverage, limits, and additional insured's and certifying that the policies will be in effect for the time periods stated in the Certificate. The obligations for Contractor to procure and maintain insurance will not be construed to waive or restrict other obligations of the Contractor. Contractor, in its agreements with Subcontractors, will require each Subcontractor who performs work on the Project Site, to obtain and maintain in effect during the term of each subcontract, insurance policies providing the coverage and limits and complying with other requirements set forth herein.

(g) NAME will not be liable for any damage to or theft of property of Contractor or Contractor's employees, Subcontractors, agents, invitees, or others at the Project Site. Contractor hereby releases and forever discharges NAME and its principals, employees, and agents, from all claims, demands, actions, liability, damage, cost, and expense relating in any way to the personal property of Contractor or its employees, Subcontractors, agents, or invitees located on or about the Project Site.

#### 10. Warranties.

(a) Contractor warrants to NAME and the owner of the Project Site that for the entire Warranty Period the Contract Work, and all materials, parts, equipment, supplies, and related items furnished, supplied, or installed as part of or in connection with the Contract Work, will be the kind, make, and quality described in the Contract Documents, will be free from faults and defects in design, composition, materials, functionality, performance, and workmanship, will fully conform to and perform in accordance with the Specifications, the Drawings, the SOW, and the Specifications, and will otherwise comply with the terms of this Agreement.

(b) Contractor warrants to NAME and the owner of the Project Site that title to all materials, supplies, and equipment that is part of or incorporated into the Contract Work will pass to NAME or the owner of the Project Site, free and clear of all liens, claims, security interests, or encumbrances. Contractor will, whenever requested to do so, furnish NAME, in such detail as may be required by NAME, statements in writing of all sums owed by Contractor or Subcontractors for services rendered, labor performed, or equipment, provisions, tools, or construction equipment furnished or used, or to be used in the performance of the Contract Work.

(c) In addition to Contractor's Warranty under Section 10(a), Contractor will transfer to NAME of the owner of the Project Site all manufacturers' warranties associated with all equipment, supplies, materials, or other components of the Contract Work or otherwise will ensure that NAME continues to receive the benefit of all such manufacturers' warranties after the expiration of the Warranty Period.

(d) NAME may conduct such reasonable tests as it deems necessary or appropriate to determine that the Contract Work satisfies the Warranty provided in Section 10(a), including, but not limited to, any specific tests set forth in the Contract Documents; *provided, however*, that no such test will be required in order for NAME to make a Warranty Claim under this Agreement. NAME will give Contractor reasonable notice of the conduct of any such tests. Contractor will have the right, with reasonable notice to NAME, to have a witness present at any such tests to make such observations as it may desire. NAME will pay all expenses associated with any such testing unless such testing confirms the existence of a Warranty Claim, in which case NAME, in addition to all other remedies available for breach of the Warranty, will have the right to recover from Contractor all expenses associated with the testing.

(e) NAME will deliver to Contractor written notice of any Warranty Claim promptly upon discovering any basis for the Warranty Claim, and in no event later than sixty (60) days after the end of the Warranty Period. Contractor, at its sole expense, will immediately commence and promptly and diligently complete the repair or replacement or re-perform the Contract Work as necessary to correct the matter or matters that form the basis of the Warranty Claim. Following any repairs, replacements, or re-performance, Contractor, at its own expense, will make such tests as NAME may request to establish that the work has corrected the matter or matters that form the basis of the Warranty Claim. In the event that Contractor, after notice, fails to immediately commence and promptly and

NAME Initials: \_\_\_\_\_

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diligently complete the necessary repair or replacement or re-performance, NAME may, but will not be obligated to, take such actions as may be necessary or appropriate to correct, or have corrected, the matter or matters that form the basis of the Warranty Claim and in such event, Contractor and its surety, if any, will be liable for all expenses incurred by NAME in connection with such actions.

(f) This Section 10 will survive the expiration or termination of this Agreement.

11. **Title to Property.** The title to all property that is part of or incorporated into the Contract Work will pass to NAME or the owner of the Project Site at the time of acceptance of the Contract Work, as provided in Section 3(a). Notwithstanding any prior transfer of title to NAME or the owner of the Project Site of materials, supplies, or equipment incorporated or to be incorporated into the Contract Work, until NAME has accepted the Contract Work, as provided in Section 3(a), Contractor will maintain the care, custody, and control of all such materials, supplies, and/or equipment and will be responsible for any loss or damage to any part of the Contract Work, regardless of the cause of such loss or damage. Contractor will insure all aspects of the Contract Work for loss, as provided in Section 9. Contractor will rebuild, repair, restore, replace, and make good all such loss or damage to the Contract Work that may occur prior to the completion of the Project and the acceptance of the Contract Work by NAME. Until completion of the Project and acceptance by NAME of the Contract Work, Contractor will at all times be responsible, at its sole expense, for the delivery of and the maintenance of all equipment, supplies, and materials furnished by Contractor or furnished to Contractor at the Project and will properly store the same and erect temporary structures where necessary for their preservation.

SAMPLE

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

## 12. Compliance With Laws.

(a) Contractor will comply at all times with all Laws, including without limitation, (i) all Laws relating to inspection of the Contract Work, inspection of construction equipment, and licensing members of crews and with respect to observance of applicable occupational safety and health standards and (ii) all applicable Laws relating to the environment and the protection of the environment. Contractor will require all of its agents, employees, Subcontractors, and representatives to comply with all Laws. Contractor and its Subcontractors will conform to such sanitation requirements or measures as may be prescribed by the applicable board of health, or any other lawfully constituted health authorities having jurisdiction over the Project.

(b) Without limiting the generality of the requirements in Section 12(a), Contractor will comply with (i) the requirements of the United States Foreign Corrupt Practices Act 1977 (FCPA) and (ii) any applicable non-U.S. laws, rules, and regulations prohibiting bribery or other corrupt payments to government officials. Contractor will not pay or give or offer or agree to pay or give money or anything of value to or for the benefit of any official or employee of any government (or any department, agency or other instrumentality thereof) of any country or subdivision thereof, or any person acting in an official capacity on behalf of such government or instrumentality, for the purposes of influencing such person or party to use his or its influence with the government concerned, or instrumentality thereof, affect or influence any act or decision of such government or instrumentality, in order to assist the parties or any of their affiliates in obtaining or retaining business for or with or directing business to any person. In addition, Contractor will not pay or give or offer or agree to pay or give money or anything of value to or for the benefit of any officer, employee, or agent of NAME for the purpose of influencing such person or party to use his or her influence with NAME to assist Contractor or its affiliates in obtaining or retaining business with NAME.

**13. Indemnification.** In addition to any specific right of indemnification that may be set forth in this Agreement, Contractor hereby agrees to indemnify, hold harmless, and defend each and every NAME Indemnified Party from and against any and all Claims arising out of, relating to, or in connection with (i) any injuries (including death) to persons and for damage or loss to property caused by, arising out of, or relating to Contractor performing the Contract Work or otherwise providing of any goods and/or services covered by this Agreement in whatever manner and by whomever the same may be caused; (ii) any wrongful act, omission, misconduct, or violation of Laws by Contractor or by any agent, servant, or employee of Contractor or any Subcontractor and any party retained by any Subcontractor; (iii) any negligent, wanton, willful, or intentional act or omission of or by Contractor, any Subcontractor, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any one of them may be liable under any Law; (iv) any breach of Warranty; and (v) any breach or violation by Contractor of, or default by Contractor with respect to, any other terms and conditions of this Agreement or Contractor's duties, obligations, and responsibilities under this Agreement. The indemnity provided in this Section 13 is intended for the benefit of NAME and each NAME Indemnified Party. Contractor's indemnification obligations will in no way be limited by the limitation on amount or type of damages or by any compensation or benefits payable by or for Contractor or any Subcontractors, under any worker's compensation act, employer liability act, disability act, or other employee benefit act. The indemnification provided in this Section 13 will survive the expiration or termination of this Agreement.

## 14. Termination.

(a) This Agreement will terminate immediately without notice upon (i) the institution of insolvency, bankruptcy, or similar proceedings by or against either Party, (ii) any assignment or attempted assignment by either Party for the benefit of creditors, or (iii) any appointment, or application for such appointment, of a receiver for either Party.

(b) In addition to any right of termination otherwise provided in this Agreement, either Party may terminate this Agreement immediately upon the occurrence of an Event of Default. An "Event of Default" means the failure of a Party (the "Defaulting Party") to perform any obligation under this Agreement or comply with any material term or provision of this Agreement and such failure remains uncured for a period of seven (7) days after receipt by the Defaulting Party of written notice of such failure from the other Party. In the event that the Defaulting Party cures the

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

Event of Default and thereafter another Event of Default occurs with respect to that Defaulting Party, the other Party may terminate this Agreement immediately upon the subsequent Event of Default.

(c) In the event of termination of this Agreement by NAME, NAME, without need of judicial intervention, may, but will not be obligated to, assume control of the Contract Work and prosecute the same to completion for the account of and at the expense of the Contractor, and the Contractor and its surety, if any, will be liable to NAME for any excess cost incurred by NAME as a result of the same, and in such event NAME may take possession of and utilize in completing the Contract Work, such materials, equipment, tools, and construction equipment as may be on the Project Site. In the event NAME terminates this Agreement under the provisions of this Section 14 and it is later determined that Contractor is not, or was not, in default or breach of this Agreement, this Agreement will be deemed to have been terminated under Section 14(d).

(d) Notwithstanding anything in this Agreement to the contrary, NAME will have the right to terminate this Agreement, in whole or in part, at any time for its convenience by giving written notice to Contractor. For any termination by NAME for its convenience, NAME will pay Contractor, as a termination charge, an amount equal to the actual costs directly incurred by Contractor, as of the date notice of termination is mailed by NAME, in performing the Contract Work that is terminated, plus a reasonable percentage of such actual costs for overhead and profit, less the total of the following:

(i) the market value of materials and equipment purchased for the Contract Work that has not been incorporated into the Contract Work, as of the date of notice of termination, and that can be returned to the vendor or used by Contractor for other purposes, plus

(ii) the salvage value of equipment purchased for the Contract Work that has not been incorporated, as of the date of notice of termination, into the Contract Work, and that cannot be returned to the vendor or used by the Contractor for other purposes, plus

(iii) claims of those who have completed labor or furnished materials for the Contract Work, as of the date of notice of termination, that have not been paid by Contractor, or any claims for which NAME may otherwise be made liable to pay under any applicable Laws, plus

(iv) the total of previous payments, if any, made by NAME; *provided, however*, in no event will the termination charge exceed the unpaid balance of the Contract Price at the date of notice of termination for the Contract Work terminated.

NAME will have the option to accept the materials and equipment in Sections (14)(d)(i) and 14(d)(ii) above in lieu of the deduction from the termination charge. Within sixty (60) days after receipt of such notice of termination for convenience, Contractor will submit its claim resulting from such termination. NAME will have the right to verify such claim at any reasonable time or times by inspecting or auditing the records, facilities, Contract Work, and equipment of Contractor and/or its Subcontractors relating to such claim. Payment of the termination charge as set forth in this Section 14(d) will constitute NAME's only liability in the event of termination under this Section 14(d). The Parties acknowledge and agree that the termination charge will be paid by NAME only in the event this Agreement is terminated by NAME for its convenience.

(e) No termination of this Agreement under this Section 14 will limit or adversely affect the right of NAME to exercise any of its other rights and remedies with respect to a default, breach, or violation of this Agreement by Contractor.

(f) Contractor acknowledges and agrees that it can be fully compensated by money damages for any breach of this Agreement by NAME and Contractor waives any and all rights and remedies to which it might otherwise be entitled because of any act or omission of NAME, other than any rights to money damages. In addition, Contractor agrees that it will have no right to consequential or incidental damages or losses by reason of any breach of this

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

Agreement by NAME or any acts of NAME under this Agreement and Contractor hereby waives any and all rights to consequential and incidental damages and losses.

15. **Taxes.** All taxes, including, without limitation, sales or use taxes, contractor's taxes (*i.e.*, Value Added Tax), and all other assessments, payments, and contributions relating to (i) agencies or programs such as Social Security System, National Health Insurance/Medicare, Employees Compensation Fund, agencies, authorities, or programs or (ii) other compensation-related taxes, now or hereafter effective, will be included in the Contract Price and NAME will have no liability or responsibility for any amounts relating to such taxes, assessments, contributions, or payments. Contractor will indemnify and hold NAME harmless from, against, and with respect to any claims, assessments, charges, fees, interest, penalties, fines, and other amounts arising out of or relating to any such taxes, assessments, contributions, and payments. This Section 15 will survive the expiration or termination of this Agreement.

16. **Assignment.** This Agreement will be binding upon the Parties, their partners, successors, legal representatives, and permitted assigns. Contractor may not assign or transfer, directly or indirectly, the whole or any part of this Agreement or any of Contractor's rights or performance obligations or any amounts at any time payable to Contractor under this Agreement, without the prior written consent of NAME, which consent may be withheld for any reason, nor without the prior written consent of any surety that has any commitment relating to this Agreement unless the surety has waived its right to notice of assignment. Any attempted assignment without NAME's prior written consent will be null and void and of no effect. NAME reserves the right to assign the Contract Work and all related rights (with respect to all or part of the Contract Work) to any one or more of the Affiliates or to any third party providing financing for NAME without the consent of Contractor.

17. **Independent Contractor.** The Parties acknowledge and agree that Contractor is and will at all times under this Agreement be an independent contractor and will be free to perform the Contract Work by such methods and in such manner as Contractor may choose, furnishing all labor, tools, and equipment and doing everything else necessary to perform the Contract Work properly and safely, having supervision over and responsibility for the safety and actions of its employees, and control over and responsibility for its tools and equipment. Contractor is not and will not act as an agent or employee of NAME. Contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Contract Work. NAME will at all times have the right to have its engineers or other authorized representatives inspect the Contract Work but any such inspection will not be for the purpose of controlling the methods and manner of the performance of the Contract Work by Contractor under this Agreement but will be solely for the purpose of assuring that the Contract Work complies with the requirements of this Agreement and assuring that the Contract Work is prosecuted at a rate consistent with the schedule set forth in the Construction Schedule.

18. **Attorneys' Fees.** In the event of a dispute between the parties regarding performance or non-performance under this Agreement, the non-prevailing party in any suit or other legal action in connection with such dispute shall pay the reasonable attorneys' fees and expenses actually incurred by the prevailing party in such proceedings.

19. **No Waiver.** No waiver by NAME, either by act or failure to act, of any default by or obligation of Contractor in the performance of its obligations under this Agreement will be deemed or construed to be a waiver, whether prior or subsequent, of the same or any other default by or obligation of Contractor.

20. **Amendment.** Except as provided in this Agreement, this Agreement may be amended only by a written instrument duly executed by authorized personnel of each Party.

21. **Construction.** This Agreement is to be deemed to have been prepared jointly by the parties to this Agreement after arms-length negotiations and any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any party but in accordance with application of the rules of interpretation of contracts. The headings and captions used in this Agreement are included for convenience only and are not intended to, and will not be deemed to, limit or otherwise affect the construction of any of its provisions.

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

22. **Arbitration.** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination will be referred to and finally resolved by arbitration under the Rules of Procedure Governing Construction Arbitration promulgated pursuant to Executive Order No. 1008 (the Construction Industry Arbitration Law) by three arbitrators to be appointed in accordance with such Rules.

23. **Severability.** Unless otherwise provided in this Agreement, if any provision of this Agreement is determined to be invalid, unlawful, or unenforceable, the validity, lawfulness, and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired by such determination and the unenforceable provision will be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed in this Agreement.

24. **Entire Agreement.** This Agreement, including the Contract Documents, and any attachment or exhibit to this Agreement, contains the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous discussions, negotiations, promises, representations, or agreements, either written or oral, of either or both Parties in connection with this Agreement.

25. **Counterparts.** This Agreement may be executed and delivered by facsimile signatures in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same document.

*[The remainder of this page is intentionally left blank. The signature page follows.]*

SAMPLE

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

In witness whereof, the Parties have caused the execution of this Agreement by their duly authorized representatives on the dates set forth below under their respective signatures.

NAME

CONTRACTOR

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

Witness:

\_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGMENT

\_\_\_\_\_ )

CITY OF \_\_\_\_\_ )

BEFORE ME, a Notary Public, personally appeared before me:

Name

Date/Place of Issue

Passport # \_\_\_\_\_

\_\_\_\_\_/Washington, DC

\_\_\_\_\_

Com. Tax Cert. \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_

known to me to be same persons who executed the foregoing instrument and acknowledge the same to be their free and voluntary act and deed as well as that of the corporation and entity they represent.

This Agreement refers to a contract containing \_\_\_\_\_ ( ) pages, including appendices, and this page on which this acknowledgment is written and all its appendices, and signed by the Parties and their witnesses on each and every page hereof.

WITNESS MY HAND AND SEAL this \_\_\_ day of \_\_\_\_\_, 20\_\_ at Unit \_\_\_\_\_,

\_\_\_\_\_

NOTARY PUBLIC

\_\_\_\_\_

Doc No. \_\_\_\_\_

Page No. \_\_\_\_\_

Book No. \_\_\_\_\_

Series of 20 \_\_\_\_\_

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_

Appendix should include the following documents

- A. Construction Schedule
- B. Drawings
- C. Statement of Work
- D. Specifications

SAMPLE

NAME Initials: \_\_\_\_\_

Contractor Initials: \_\_\_\_\_