



Modifications to the General Provisions and FAR, DFARS and NASA Provisions for Government Time and Material and Labor Hour Contracts

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Section II, General Provisions and FAR, DFARS, and NASA Provisions for Government Fixed Price Contracts are applicable to this procurement with the following modifications. These modifications are additions to the General Provisions in Section II.

32. QUALIFICATIONS OF PERSONNEL (Additional provision):

Seller shall employ only qualified and competent persons in the performance of this Contract, shall assign personnel satisfactory to MDHS, shall perform the work in accordance with the highest standards, and shall effect completion of each assigned task on or before the date specified, if any. At any time and for any reason, MDHS may require Seller to withdraw the services of any person and, in addition, require that Seller promptly provide replacements for such persons satisfactory to MDHS. In addition to the other indemnification provisions within this Contract, Seller specifically agrees to indemnify and hold harmless MDHS, from and against any liabilities, claims charges, or suits for alleged losses, costs, damages or expenses arising from MDHS's exercise of its rights

under this Article 32.

33. MATERIAL (Additional provision):

Material supplied under this Contract will be paid at Seller's cost without overhead or profit in accordance with FAR 52.232-7 (Payments Under Time-and-Materials and Labor-Hour Contracts) in effect as of the date of this Contract.

34. ETHICAL PRACTICES (Additional provision):

(A) Seller agrees to instruct all of its employees as to the confidential nature of their conditions of employment, including but not limited to compensation and benefits, and that statements regarding these conditions are not to be made at any time to employees of MDHS.

(B) Seller understands that the personnel it provides pursuant to this Contract may be assigned work which affords access to the trade secrets or other proprietary information of MDHS. Seller, therefore, agrees that it will not require its personnel provided to reveal to or discuss with Seller the detail of their assignment with MDHS except when such disclosure is required for Seller's performance of this Contract.

(C) Seller agrees that it will not, during the existence of this Contract, induce or attempt to induce any employees of MDHS, or any employees of companies under contract with MDHS, to leave their present employment and become employees of Seller or any related entity.

35. TIMEKEEPING (Additional provision):

(A) Throughout the period of performance of this Contract, Seller shall maintain a timekeeping system, satisfactory to MDHS, sufficient to reflect properly the hours worked by each of Seller's employees and the nature of the work performed.

(B) OVERTIME HOURS. Overtime hours shall mean those hours worked in excess of forty (40) hours during the Seller's standard workweek. All such overtime must have the prior approval of MDHS's Purchasing Representative.

36. HOLIDAYS AND VACATIONS (Additional provision):

MDHS shall not be obligated to make any payments to Seller for days designated by MDHS as holidays or shutdown periods, except for authorized work performed thereon. Seller's personnel working at MDHS facilities shall arrange any earned vacation time periods with their MDHS Supervisor.

37. PAYMENT (Additional provision):

(A) Seller shall submit all invoices in duplicate to MDHS's Purchasing Representative. All shipping costs and federal manufacturers and retailers' excise and state or local sales or use taxes, when applicable, must be billed as separate items on Seller's invoices. Any and all tax exemption certificates shall be accepted by Seller. Upon receipt of an accurate and properly executed invoice, MDHS will pay Seller for the labor performed at the rates specified in this Contract. Such rates include all wages, overhead, general and administrative expenses and all other direct or indirect costs and profit to be recovered or charged by Seller under this Contract. Average straight time wages paid by Seller to its employees utilized in performance hereof shall not be less than the minimum wage of each appropriate labor classification set forth in this Contract. Seller shall pay promptly, when due, all claims by Seller's personnel for services relating to the work.

(B) Invoices for reimbursement of the cost of transportation furnished by Seller shall be paid only if authorized herein and supported by documentary evidence satisfactory to MDHS.

(C) MDHS shall be liable for payment of overtime if specifically authorized in writing in advance by MDHS and for premium rates on such overtime if premium rates are set forth herein.

(D) Invoices for reimbursement of the cost of material purchased or supplied by Seller will be paid at the actual cost expended.

38. LIMITATION ON PAYMENTS (Additional provision):

(A) Seller will include in each price redetermination or incentive price revision subcontract the substance of the following clauses, whichever is applicable, in effect on the date of this Contract. In each of the following clauses, "Contractor" means Seller.

(1) FAR 52.216-5 Price Redetermination - Prospective, paragraphs (h) and (i), modified as required by subparagraph (i) (1);

(2) FAR 52.216-6 Price Redetermination - Retroactive, paragraphs (g) and (h), modified as required by subparagraph (h) (1);

(B) Seller will include the substance of this Article in each time and material subcontract, modified to reflect the subcontractor's position as seller.

39. RECORDS AND AUDIT (Additional provision):

(A) Seller shall maintain detailed, complete and accurate records of labor furnished in connection with performance, and MDHS shall be permitted to inspect and audit such records at all reasonable times.

(B) At any time before final payment under this Contract, except as otherwise provided in FAR 52.215-2 (Audit - Negotiation), MDHS may request audit of the invoices and substantiating material or documents. Each payment previously made shall be subject to MDHS not being properly paid and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by Seller as the "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this Contract (including, without limitation, terms relating to patents), MDHS shall promptly pay any balance due Seller. The completion invoice and substantiating material, shall be submitted by Seller as promptly as practicable following completion of the work under this Contract.

40. INSURANCE (Additional provision):

Seller shall maintain worker's compensation and comprehensive general liability insurance coverage including products liability and completed operations in the form, amounts, and with carriers satisfactory to MDHS. Seller shall submit Certificates of Insurance indicating MDHS as an additional insured on request or submit for inspection any such policies to MDHS.

41. INDEPENDENT CONTRACTOR (Additional provision):

Seller is an independent contractor for all purposes. In no event shall Seller, its agents, representatives, or personnel that it supplies to MDHS under this Contract be deemed to be employees of MDHS. Seller's employees shall be paid exclusively by Seller for all services performed and Seller shall be responsible for and shall actually comply with all requirements and obligations relating to such employees under local, state or federal law, (or foreign law as applicable) including but not limited to minimum wage, social security, unemployment insurance, state and federal income tax, and worker's compensation. MDHS has no responsibility for withholding any portion of salary or wages due employees of Seller to comply with any of the aforementioned taxes or obligations.

42. PERSONAL INJURY OR PROPERTY DAMAGE (Additional provision):

Seller will indemnify and hold harmless MDHS, its Officers, Agents, Subcontractors and employees from and against any and all loss, damage, cost and expense to MDHS because of death or injury to any persons including employees, agents or representatives and to third persons, or because of damage to property of MDHS or Seller which arose directly or indirectly by virtue of this Purchase Order and resulting from Seller's sole or joint negligence.

43. ACCESS TO PLANT PROPERTY (Additional provision):

Seller shall comply with all the rules and regulations established by MDHS for access to and activities in and around MDHS's plants and properties.

44. CONTROLS (Additional provision):

(A) Seller shall maintain careful records in such a manner as to be able to determine at all times the exact current balance of the not-to-exceed funds in this Contract. If at any time Seller has reason to believe that the applicable payments which will accrue in the performance of this Contract in the next succeeding thirty (30) calendar days, when added to all other payments and costs previously accrued, will exceed seventy-five percent (75%) of the not-to-exceed price then set forth, Seller shall give written notice to MDHS to that effect.

(B) MDHS shall not be obligated to pay Seller any amount in excess of the not-to-exceed price set forth in this Contract, and Seller shall not be obligated to continue performance if to do so would exceed the price, unless and until MDHS shall have notified Seller in writing that such not-to-exceed price has been increased and shall have specified in such notice a revised not-to-exceed amount which shall thereupon constitute the maximum not-to-exceed price for performance of this Contract. When and to the extent that the not-to-exceed price set forth has been increased, any time expended and authorized costs incurred by Seller in excess of the not-to-exceed price prior to the increase shall be allowable to the same extent as if such time expended and costs incurred had been after such increase.

[MDHS 1997 Terms & Conditions](#)