

(Please insert the Standard Form 1442 in Attachment C to Manual Section 739 before this contract.)

PEACE CORPS - FIXED PRICE CONSTRUCTION CONTRACT

Project Name:

RFP Number:

Project Location:

Date of Solicitation:

Issuing Office:

For further information contact:

Phone:

Contract Number:

SECTION A

CLAUSE I DEFINITIONS

Plans and Specifications — Drawings, diagrams and other data for and preliminary to construction.

Allowance Items — Items designated by the Government in the Contract documents which the Government has the option either to delete from the contract and procure directly, or to allow to remain in the contract as the responsibility of the Contractor to provide.

Alternate — An item included in the Contractor's proposal not called for in the Contract documents which the Government has the option of including or deleting at the time of contract award. If the item; is deleted, an equitable adjustment shall be made to the Contractor's price proposal. The Government shall also have the option to request reinsertion of the deleted item within 90 days after contract award. An equitable adjustment shall be made to the contract price, but no change in the delivery schedule shall be made.

Equipment — All items used in performing the work for this construction project but not to remain with the project.

Material — All supplies, fixtures and other articles incorporated in, or which are intended to remain with, the project.

CLAUSE II PROJECT DESCRIPTION/SCOPE

[Please reference Line 10 on SF 1442]

CLAUSE III SCOPE OF CONTRACT

The Contractor shall furnish all labor, materials, equipment and services required for the project described above, in strict accordance with and as described in the Contract Documents (including Addenda and accepted Alternate) enumerated below and incorporated herein by reference, and by any authorized Modifications to the Contract.

1. Construction Contract (this document)
2. Contract Specifications
3. Contract Drawings

CLAUSE IV CONTRACT PRICE

The Government agrees to pay the Contractor, for the full performance of the contract (including all Allowance items and accepted Alternates) in strict accordance with the Contract Documents, the fixed price of _____ according to the payment schedule provided in

Any error noted in the bid with respect to inadequate amounts of materials, or underestimated prices, shall be borne solely by the Contractor.

CLAUSE V INDIRECT COSTS AND FEES

The maximum allowable percentages for any resultant modifications shall be:

Overhead _____% of direct costs

Profit (fee) _____% of direct costs

CLAUSE VI PAYMENT

(Below should be used as guidance – remove after modification. Insert payment terms and conditions here, or include as an attachment).

Use FAR 36.207 as a guide

36.207 Pricing fixed-price construction contracts.

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced—

- (1) On a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work),
- (2) On a unit-price basis (when a unit price is paid for a specified quantity of work units), or
- (3) Using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

- (1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;
- (2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
- (3) Estimated quantities of work required may change significantly during construction; or
- (4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment

provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

CLAUSE VII. REPORT OF DELAYS

The Contractor shall promptly report to the Contracting Officer any events which might prevent timely completion of the work. The Contractor's right to proceed shall not be terminated, nor the Contractor charged with damages (as called for in Clause VIII) if the delay in completing the work, as ascertained by the Contracting Officer, arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor.

CLAUSE VIII CHANGES

The Contracting Officer reserves the right to make changes within the scope of this contract. No change to this contract shall be binding on the Government unless agreed to in writing by the Contracting Officer.

CLAUSE IX SUBCONTRACTS

No work called for under this contract shall be subcontracted without the written approval of the Contracting Officer.

CLAUSE X LIABILITY

The Contractor shall hold and save the U. S. Government harmless from all liability for any costs or expenses for or on account of any or all suits or damage sustained by any person, including employees of the Contractor, or property by virtue of performance of this contract. The Contractor shall provide and maintain liability insurance for this purpose and shall furnish proof of such insurance upon request of the Contracting Officer. Prior to final payment under the contract, the Contractor shall execute and deliver a release discharging the Government, its officers and employees from all liabilities, obligations and claims arising out of or under this contract.

CLAUSE XI EMPLOYEES

The Contractor agrees to abide by the existing laws and regulations of _____ as far as his employees and their rights are concerned. The Contractor shall hold sole responsibility for any employee claims or charges and that in no way can the U. S. Government, its officers, agents and employees be held responsible or liable for any employee claims.

CLAUSE XII GOVERNMENT PROPERTY

Damage to, or loss of, U. S. Government property when it is due to the Contractor's negligence shall result in the Contractor being responsible for repair or replacement thereof.

CLAUSE XIII PERIOD OF PERFORMANCE

(Insert as necessary - put in the total number of calendar days. Include a starting and ending date.)

CLAUSE XIV COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

The Contractor shall be required to (a) commence work under this contract within _____ [*Contracting Officer insert number*] calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than _____.* The time stated for completion shall include final cleanup of the premises.

CLAUSE XV LIQUIDATED DAMAGES — CONSTRUCTION

((a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of _____ [*Contracting Officer insert amount*] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

CLAUSE XVI SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK.

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground, and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can accept the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

CLAUSE XVII MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

CLAUSE XVIII PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS.

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limb or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property or a third party, the location of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work, if the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

CLAUSE XIX USE AND POSSESSION PRIOR TO COMPLETION

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or cause additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

CLAUSE XX CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

CLAUSE XXI SCHEDULES FOR CONSTRUCTION CONTRACTS

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to include the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time

prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days to work, and/or supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

CLAUSE XXII WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

SECTION K — REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

CLAUSE XXIII CONTINGENT FEE REPRESENTATION AND AGREEMENT

NOTE: The offeror must check the appropriate boxes. For interpretation of the representation, including the term "bona fide employee," see Subpart 3.4 of the Federal Acquisition Regulation.

- (1) () has, () has not employed or retained any person or company to solicit or obtain this contract; and
- (2) () has, () has not paid or agreed to pay to any person company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) Agreement. The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a) (1) or (a) (2) is answered affirmatively, to promptly submit to the Contracting Officer.

CLAUSE XXIV AUTHORIZED NEGOTIATORS

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: (list names, titles, and telephone numbers of the authorized negotiators).

CLAUSE XXV PERIOD FOR ACCEPTANCE OF OFFER

In compliance with the solicitation, the offeror agrees, if this offer is accepted within [] calendar days (60 calendar days unless a different period is inserted by the offeror) from the date specified in the solicitation for receipt of offers, to furnish any or all items on which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

CONTRACT CLAUSES INCORPORATED BY REFERENCE

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon requests, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<https://www.acquisition.gov/far/>

Number	Title	Date
	Federal Acquisition Regulations	
52.202-1	Definitions	JAN 2012
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-7	Anti-Kickback Procedures	OCT 2010
52.211-13	Time Extensions	SEP 2000
52.214-27	Price Reduction for Defective Cost or Pricing	
	Data — Modifications — Sealed Bidding	AUG 2011
52.214-29	Order of Precedence	JAN 1986
52.225-13	Restriction on Certain Foreign Purchases	JUN 2008
52.229-6	Taxes-Foreign Fixed Price Contracts	JUN 2003

52.233-1	Disputes	JUL 2002
52.233-3	Protest after Award	AUG 1996
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-10	Operation and Storage Areas	APR 1984
52.236-14	Availability and Use of Utility Services	APR 1984
52.243-4	Changes	JUN 2007
52.246-12	Inspection of Construction	AUG 1996
52.249-2	Termination for Convenience of the Government (Fixed-Price)	APR 1984 Alternate I (MAY 2004)

SECTION B — INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

52.252-1 Solicitation Provisions Incorporated by Reference. (JUN 1988)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

Number	Title	Date
	Federal Acquisition Regulations	
52.214-5	Submission of Bids	MAR 1997
52.214-6	Explanation to Prospective Bidders	APR 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Proposals	JUL 1995
52.214-18	Preparation of Bid—Sealed Bidding—Construction	AUG 1984
52.214-19	Contract Award—Sealed Bidding—Construction	AUG 1996
52.233-2	Service of Protest	SEPT 2006

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from [(Contracting Officer designate the official and location where a protest may be served on the Contracting Officer.)]

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies or services being procured. (Contracting Officer shall strike the word "not" where the GSBCA is a correct forum.)