

State of Minnesota

Department of Military Affairs



REQUEST FOR PROPOSAL

**Construction Testing & Inspecting Services for
Renovation and Addition of the
Marshall Minnesota National Guard Armory
(Project No. 21102)**

Date Posted: March 4, 2024

- Responses must be received no later than 2:00 p.m., Central Time, March 25, 2024.
- Late responses will not be considered.

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to [the Office of Equity in Procurement home page, at www.mn.gov/admin/oep](http://www.mn.gov/admin/oep).

SPECIAL NOTICE: This is a request for proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

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Solicitation Attachments

- Attachment A: Responder Declarations
- Attachment B: Exceptions to State's Terms and Conditions
- Attachment C: Cost Proposal
- Attachment D: Responder Forms
 - Veterans Preference Form (if applicable)
 - Workforce-Equal Pay Declaration

Sample Contract

- Exhibit A: Contract Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Breakdown of Cost
- Exhibit E: Special Conditions for Contract Work Involving Federal Funds

SECTION 1 – INSTRUCTIONS TO RESPONDERS

Steps for
Completing Your
Response

Follow the steps below to complete your response to this Solicitation:

- Step 1: Read the solicitation documents and ask questions, if any
- Step 2: Write your response
- Step 3: Submit your response

Incomplete
Submittals

A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.

STEP 1 – READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY

How to Ask
Questions

The contact person for questions is:

Mr. Paul Kempton, Project Manager
Facilities Management - Design
Email: paul.e.kempton.nfg@army.mil

Questions should be emailed to the contact by 2:00 p.m., Central Time, March 14, 2024.

Other personnel are not authorized to answer questions regarding this Solicitation.

STEP 2 – WRITE YOUR RESPONSE

The Proposal Content section is in Section 4. Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4. **DO NOT INCLUDE** Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

Review, sign, and include the Responder Declarations with your response.

STEP 3 –SUBMIT YOUR RESPONSE

Where to Send
Your Response

Submit your response to:

Department of Military Affairs
Sarah Posterick, Contracts Specialist
Email: sarah.m.posterick.nfg@army.mil

Proposals must be received no later than 2:00 p.m., Central Time, March 25, 2024.

Late responses will not be considered.

Provide one (1) copy of the proposal. Proposals are to be emailed with the responder's name and address written on the cover sheet. Provide one copy of the cost proposal in a separate email attachment clearly marked "Cost Proposal" along with the responder's name.

By submitting a response, responder is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer. By submitting a response, your company is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer.

E-MAIL RESPONSES WILL BE ACCEPTED FOR THESE PROPOSALS, however the burden of providing timely receipt is upon the responder. Responders should be advised that there may be a delay in the email delivery due to required automated security checks in all emails Military Affairs staff receive. Despite this delay, Responders must ensure that submissions are received by the designated email address detailed in this Solicitation by the due date and time specified herein.

SECTION 2 – SUMMARY OF SCOPE

1. Project Overview and Goals.

The Department of Military Affairs intends to renovate and expand the Marshall Minnesota National Guard Armory located at 500 Timmerman Drive, Marshall, MN 56258. The scope of work includes, but is not limited to, the following: removal and replacement of interior concrete slabs on grade, removal and replacement of exterior concrete slabs on grade, removal and replacement of bituminous paved parking areas, removal and replacement of concrete curb and gutter, site grading and restoration, infilling existing openings in masonry walls, cutting new openings in existing masonry walls, installing new steel lintels over new wall openings, new concrete foundation elements, adding new steel framing members to the existing roof structure, addition of a steel framed mechanical penthouse, installation of drilled aggregate piers to stabilize existing soils, addition of a new concrete vault, addition of masonry walls and steel roof structure, insulating the interior sides of exterior walls to comply with current energy codes, and upgrading the mechanical and electrical systems. Construction testing and inspecting services are necessary to complete this project.

2. Sample Tasks and Deliverables.

Provide construction inspecting and testing services as indicated in Attachment C, Cost Proposal. Tasks include the following:

1. Structural Requirement: The Testing and Inspecting Agency will perform seventy (70) nuclear soil density tests in accordance with ASTM D6938 on subgrade and fill material. Tests will be performed to verify that minimum compaction as specified in the contract documents has been achieved.
2. Structural Requirement: Ground improvements (rammed aggregate piers) are to be observed by the Testing and Inspecting Agency to verify the site has been prepared correctly.
3. Structural Requirement: Backfill and subgrade placement associated with the building are to be observed by the Testing and Inspecting Agency to verify the use of proper material, lift thickness, and compaction.
4. Structural Requirement: Testing and Inspecting Agency is to conduct concrete strength, slump, temperature, and air content tests and cast a set of four (4) cylinders. The concrete test cylinders will be returned to the laboratory for standard curing and compression testing. One (1) cylinder of each set of four (4) will be broken at the laboratory at the 7-day age and three (3) will be broken at the 28-day age to obtain the compressive strength. For the building concrete, one set of test cylinders shall be cast for each 50 cubic yards of concrete placed, or for each pour if less, for each type of concrete mix placed. A minimum of three tests and sets of cylinders are to be cast for the equipment platform topping.
5. Structural Requirement: Testing and Inspecting Agency is to witness the installation of all post-installed anchors and dowels in concrete to verify installation is in accordance with the manufacturer's recommendation, requirements of ICC reports, and construction documents.
6. Structural Requirement: Testing and Inspecting Agency is to inspect concrete formwork, reinforcement placement, and curing and placement techniques for the building concrete. The Testing and Inspecting Agency is to verify formwork dimensions and locations are in accordance with the construction documents, reinforcement sizes, spacings, lap lengths, and cover dimensions are in accordance with the construction documents, and proper curing, placement, hot and cold weather requirements are followed by the construction contractor. Inspections are to be completed per each concrete placement.
7. Structural Requirement: Testing and Inspecting Agency is to inspect concrete masonry wall construction to verify mortar, grout, steel embed plates, and steel reinforcement are placed in accordance with the construction documents. Testing and Inspecting Agency is to also verify hot and cold weather requirements are being followed. Inspections are to be per grout pour.

8. Structural Requirement: Testing and Inspecting Agency is to test grout used for core filling masonry walls to verify it meets the project specifications. Tests are to be in accordance with ASTM C1019. Compressive strength, slump, and temperature of grout sample and ambient temperature shall be measured at the time of grout placement. Compressive strength shall be measured at 7 and 28 days. Three (3) specimens shall be tested at each age. One (1) set of tests shall include three (3) tests at 7 days and three (3) tests at 28 days. Unless noted otherwise, each grout pour, including grouting existing cores, shall be tested.
9. Structural Requirement: Testing and Inspecting Agency is to test mortar used in conjunction with masonry to verify it meets the project specifications. Tests are to be in accordance with ASTM C780 Annex A4 – Mortar Aggregate Ratio Testing. A total of four (4) sets of tests are to be conducted. One (1) test includes three (3) specimens. Sampling for tests is to be conducted on different days.
10. Structural Requirement: Testing and Inspecting Agency is to test concrete masonry units (cmu) in accordance with ASTM C140 for conformance with the requirements of this specification and the construction documents. Unit dimensions and absorption are to be measured. A total of two (2) tests are to be conducted. One (1) test is to be conducted to represent the 8 inch thick wall and one (1) test is to be conducted to represent the 12 inch thick walls. One (1) test includes three (3) specimens.
11. Structural Requirement: Testing and Inspecting Agency is to test masonry and mortar panels (prims tests) for compressive strength in accordance with ASTM C1314. A total of three (3) tests are to be conducted. Two (2) tests are to be conducted to represent the 8 inch thick wall and two (2) tests are to be conducted to represent the 12 inch thick walls. One (1) test includes three (3) specimens. Specimens are to be tested ungrouted.
12. Structural Requirement: Installation of all post-installed masonry anchors and dowels shall be witnessed by the Testing and Inspecting Agency to verify installation is in accordance with the manufacturer's recommendation, requirements of ICC reports, and construction documents.
13. Structural Requirement: All field welded and bolted structural steel connections are to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents.
14. Structural Requirement: All steel details are to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents.
15. Structural Requirement: All new metal deck and all fastening of new structure to new and existing metal deck is to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents. Testing and Inspecting Agency is to verify the following: deck type, fastener size, fastener pattern, deck span, and deck overlap.
16. Miscellaneous Requirement: Testing and Inspecting Agency is to inspect openings and penetrations in fire-resistive wall and ceiling assemblies for adequate fire-stopping or sealing.
17. Miscellaneous Requirement: Testing and Inspecting Agency is to inspect sealant around new window openings and around the new main entrance door and windows for conformance with the construction documents.
18. Miscellaneous Requirement: Testing and Inspecting Agency is to review the project drawings and specifications and correspond periodically with the project engineer about drawing details, test results, and construction contractor performance.
19. Miscellaneous Requirement: The project engineer will not be on-site frequently. Therefore, it is expected that the Testing and Inspecting Agency will have a regular presence on-site and their on-site staff will fully understand the project drawings and specifications.
20. Civil Requirement: The Testing and Inspecting Agency will perform nuclear soil density tests in accordance with ASTM D6938 on utility trench backfill. One (1) test is to be conducted for each 2' of trench depth at a minimum of 2 locations along the utility trench. Tests will be performed to verify that minimum compaction as specified in the contract documents has been achieved.

21. Civil Requirement: Grading, Base, and Reclamation Construction Items: Provide gradation testing and test rolling observation (of subgrade & aggregate base) in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
22. Civil Requirement: Concrete testing: Provide air content, slump, temperature, and compressive strength testing in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
23. Civil Requirement: Bituminous testing: Provide testing of Asphalt Binder Content, Mixture Properties, and testing of Core Density and Thickness in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
24. One copy of all test results will be furnished to:
 - a. Construction Contractor: To Be Determined
 - b. Building Code Official: To Be Determined
 - c. Consultants:
 - Mr. Nathan Thomas, Structural Engineer
Facilities Management Office
Telephone: 320.616.6085
Email: nathan.c.thomas15.nfg@army.mil
 - Mr. Michael Rude, Civil Engineer
Facilities Management Office
Telephone: 320.616.6157
Email: michael.e.rude.nfg@army.mil
 - d. Owner:
 - Mr. Paul Kempton, Project Manager
Facilities Management Office
Telephone: 320.616.6163
Email: paul.e.kempton.nfg@army.mil
 - e. All test reports and results shall be uploaded to owner provided Procore software with notification issued to Construction Contractor, Consultants and Owner representative.
25. If at any time there are failing test results or observations are made that do not appear to be in accordance with the plans and specifications, Contractor will notify the POCs listed above immediately after testing. Retests will be charged to the Construction Contractor.
26. Inspection reports are to contain photos of inspected work along with specific information of what was witnessed during the inspection. The following is a general example of what would be acceptable; #4 epoxy coated bars were placed at 12 inches on center each way with 3 inch bottom cover. To the best of our knowledge, all rebar was placed according to the plans and specifications. Without being superseded with specific information the following is an example of what would not be acceptable; to the best of our knowledge, all rebar was placed according to the plans and specifications.
27. The following documents are incorporated and form a part of this Contract:
 - a. Specifications for the work
 - b. Drawings for the work
 - c. All addenda for the workTo receive a copy of the Project Plan and all Addenda, email a request to sarah.m.posterick.nfg@army.mil.

3. Skills.

All personnel provided by Contractor shall be fully qualified and authorized under State and local law to perform the services required by the contract.

SECTION 3 – PROPOSAL INSTRUCTIONS AND ADDITIONAL INFORMATION

1. Anticipated Contract Term.

The term of this contract is anticipated to be from April 1, 2024, to March 31, 2026, with the option to extend up to three (3) additional one (1) year in increments determined by the State.

2. Question and Answer Instructions.

All questions should be submitted no later than the date and time listed in Section 1, Instructions to Responders. The State is not obligated to answer questions submitted after the question due date and time.

Only personnel listed above are authorized to discuss this solicitation with responders. Contact regarding this solicitation with any personnel not listed above could result in disqualification. This provision is not intended to prevent responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify the contact person detailed above in writing of such error and request modification or clarification of the document.

3. Additional Tasks or Activities.

Responders are encouraged to propose additional tasks, activities, or goods above and beyond the scope of what is requested in this solicitation if they will substantially improve the results of this procurement. Any costs associated with these additional tasks, activities, or goods should be clearly marked and separated from costs associated with the tasks, activities, or goods specifically requested under this solicitation. Because cost is a factor in the evaluation of responses to this solicitation, failure to separate costs for additional tasks, activities, or goods may result in those costs being included in a responder's cost proposal and result in a lower cost score for that proposal.

SECTION 4 – PROPOSAL CONTENT

Proposal shall be submitted in 8½" x 11", soft bound, portrait format. Maximum of 20 **faces** (excluding front and back covers, blank dividers, affidavit of non-collusion, workforce certificate information, certification regarding lobbying, equal pay certification form, veteran-owned preference form, resident vendor form, and cost proposal). All pages should be numbered.

Please submit the following information:

1. **Qualifications and Experience.**

Responder should provide an outline of background and experience with examples of similar work done by the Responder and a list of personnel who will conduct the project, detailing their training, and work experience. All personnel provided by the Contractor must be fully qualified and authorized under State of Local Law to perform the services required by the contract.

2. **Cost Proposal.**

Complete and submit Attachment C, "Cost Proposal," attached to this solicitation.

Submit all requested documentation, including, but not limited to, the following documents:

1. Attachment A: Responder Declarations
2. Attachment B: Exceptions to State's Standard Terms and Conditions
3. Attachment C: Cost Proposal
4. Attachment D: Responder Forms
 - a. Veterans Preference Form (if applicable)
 - b. Work Force & Equal Pay Declaration

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

SECTION 5 – EVALUATION PROCEDURE AND CRITERIA

The State will conduct an evaluation of responses to this Solicitation. The evaluations will be conducted in three phases:

Phase 1 - Review Responses for Responsiveness and Pass/Fail Requirements

Phase 2 - Evaluate Responses

Phase 3 - Select Finalist(s)

1. Phase 1 – Responsiveness and Pass/Fail Requirements

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

Mandatory Requirements. The following will be considered on a pass/fail basis:

- Responses must be received by the due date and time specified in this RFP.

2. Phase 2 - Evaluate Responses

Only those responses found to have met Phase 1 criteria will be considered in Phase 2.

The factors and weighting on which responses will be evaluated are:

- | | |
|--------------------------------------|---|
| 1. Qualifications and Experience | 500 points |
| 2. Cost Proposal | <u>500 points</u> |
| | 1,000 points |
| 3. Preference Points (if applicable) | 120 points (in addition to 1,000 available) |

Preference points are described under Solicitation Terms and will be applied to the total score after points have been awarded.

3. Phase 3 - Select Finalist(s)

Only those responses that have been evaluated under Phase 2 shall be eligible for Phase 3.

The State will make its selection based on best value, as determined by this evaluation process. The State reserves the right to pursue negotiations on any exception taken to the State's standard terms and conditions. In the event that negotiated terms cannot be reached, the State reserves the right to terminate negotiations and begin negotiating with the next highest scoring responder or take other actions as the State deems appropriate. If the State anticipates multiple awards, the State reserves the right to negotiate with more than one Responder.

It is anticipated that the evaluation and selection will be completed by as soon as possible.

SECTION 6 – SOLICITATION TERMS

1. Competition in Responding

The State desires open and fair competition. Questions from responders regarding any of the requirements of the Solicitation must be submitted in writing to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

2. Addenda to the Solicitation

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

3. Data Security - Foreign Outsourcing of Work is Prohibited

All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all levels.

4. Joint Ventures

The State allows joint ventures among groups of responders when responding to the solicitation. However, one responder must submit a response on behalf of all the others in the group. The responder that submits the response will be considered legally responsible for the response (and the contract, if awarded).

5. Withdrawing Response

A responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations done any other way, a responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

6. Rights Reserved

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract may be considered in the evaluation process;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;
- Request a best and final offer from one or more Responders;
- The State reserves the right to request additional information ; and
- The State reserves the right to use estimated usage or scenarios for the purpose of conducting pricing evaluations. The State reserves the right to modify scenarios, and to request or add additional scenarios for the evaluation.

7. Samples and Demonstrations

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

8. Responses are Nonpublic during Evaluation Process

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the evaluation results.

9. Trade Secret Information

- 9.1 Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.
- 9.2 In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the data, and any and all costs connected with that defense.
- 9.3 The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.
- 9.4 A responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

10. Conditions of Offer

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services and general services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

11. Award

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

12. Requirements Prior to Contract Execution

Prior to contract execution, a responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

13. Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned (VO) businesses will receive points equal to 12% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit [the Office of Equity in Procurement website at https://mn.gov/admin/business/vendor-info/oep/](https://mn.gov/admin/business/vendor-info/oep/) or call the Division's Helpline at 651.296.2600.

14. Reciprocity

State shall comply with Minn. Stat. § 16C.06, subd. 7, as that applies to a non-resident vendor. This paragraph does not apply for any project in which federal funds are expended.

ATTACHMENT A: RESPONDER DECLARATIONS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. **Response Contents.** The information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law
- B. **Authorized Signature.** This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.
- C. **Non-Collusion Certification.**
1. The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
 2. The contents of the Response have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.
- D. **Organizational Conflicts of Interest.** To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,
1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
 2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
 3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to OSP, the State may terminate the contract for default. Organizational conflicts of interest terms apply to any subcontractors for this work.

- E. **Certification Regarding Lobbying.** For State of Minnesota Contracts and Grants over \$100,000, the undersigned certifies, to the best of his or her knowledge and belief that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- F. **Copyrighted Material Waiver.** By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.
- G. **Diverse Spend Reporting.** The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend.

Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

ATTACHMENT B: EXCEPTIONS TO STATE'S TERMS AND CONDITIONS

The State presumes a responder agrees to the terms and conditions of this solicitation unless a responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State's terms and conditions (including those found in the attached Sample Contract).

INSTRUCTIONS: A responder must explicitly list all exceptions to State's terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a responder's exceptions. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their response. *(Add additional pages if necessary.)*

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

By signing this form, I acknowledge that the above-named responder accepts, without qualification, all terms and conditions stated in this solicitation (including the sample contract) except those clearly outlined as exceptions above.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT C: COST PROPOSAL

RESPONDER NAME: _____

Quantities for testing and inspection services listed below. Services and quantities are approximate and will vary with Contractor's means, methods, and scheduling.

DESCRIPTION	ESTIMATED QUANTITY	UNIT RATE	TOTAL RATE
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Utility Installation

Soils Proctor	1 Test	\$ /Test	\$
Nuclear Soil Density Test	30 Tests	\$ /Test	\$
Consultation & Reporting	8 Hours	\$ /Hour	\$

Grading and Base

Gradation	4 Tests	\$ /Test	\$
Observe Test Rolling (Subgrade & Base)	2 Tests	\$ /Test	\$
Consultation & Reporting	12 Hours	\$ /Hour	\$

Concrete Paving

Air Content	10 Tests	\$ /Test	\$
Slump	3 Tests	\$ /Test	\$
Temperature	10 Tests	\$ /Test	\$
Compressive Strength (set of 3)	5 Tests	\$ /Test	\$
Consultation & Reporting	12 Hours	\$ /Hour	\$

Bituminous Paving

Asphalt Binder Content	2 Test	\$ /Test	\$
Mixture Properties	2 Test	\$ /Test	\$
Core Density and Thickness	2 Test	\$ /Test	\$
Consultation & Reporting	4 Hours	\$ /Hour	\$

Structural Requirement - Soils Associated with the Building (including stoop)

Nuclear Soil Density Test (ASTM D6938) & Report	70 Tests	\$ /Test	\$
Observations of Ground Improvements & Report	240 Hours	\$ /Hour	\$
Observation of Backfill and Subgrade Placement & Report	100 Hours	\$ /Hour	\$

Structural Requirement - Concrete & Masonry Associated with the Building

Observation of Post-Installed Concrete Anchor and Dowel Installation & Report	20 Hours	\$ /Hour	\$
Air, Slump, Temperature, Unit Weight, & Casting of sets of 4 Concrete Cylinders per set Test & Report	35 Sets	\$ /Set	\$
Curing & Compression Test & Reports of each Concrete Cylinders	140 Tests	\$ /Test	\$

Inspection of Concrete Formwork, Steel Reinforcement, Curing and Placement Techniques, Hot & Cold Weather Requirements & Report	160 Hours	\$ /Hour	\$
Mortar Test (ASTM C780) & Report	4 Sets	\$ /Set	\$
Grout Test (ASTM C1019) & Report	35 Sets	\$ /Set	\$
Inspect placement of Masonry Mortar, Grout, Steel Embed Plates, Steel Reinforcement, and Hot & Cold Weather Requirements & Report	240 Hours	\$ /Hour	\$
Observation of Post-Installed Masonry Anchor and Dowel Installation & Report	200 Hours	\$ /Hour	\$
Test Concrete Masonry Units (ASTM C140) & Report	2 Sets	\$ /Set	\$
Test Masonry and Mortar Panels (Prism Tests) (ASTM C1314) for Compressive Strength & Report	4 Sets	\$ /Set	\$

Structural Requirement - Steel

Inspect Structural Steel Field Welded and Bolted Connections & Report	80 Hours	\$ /Hour	\$
Inspect Metal Deck & Report	32 Hours	\$ /Hour	\$
Inspect Steel Details & Report	60 Hours	\$ /Hour	\$

Miscellaneous

Inspect openings and penetrations in fire-resistive wall and ceiling assemblies for adequate fire-stopping and sealing & Report.	2 Hours	\$ /Hour	\$
Inspects sealant around new window openings and main vestibule exterior door and windows & Report	2 Hours	\$ /Hour	\$
Drawing Review and Correspondence with Project Engineer	120 Hours	\$ /Hour	\$
Concrete Slab Moisture Testing for Floor Finishes per STM F1869 and ASTM F2170	20 Hours	\$ /Hour	\$

Travel

Trip Charge (Travel Time & Mileage if Allowed under State Contract)	200 Trips	\$ /Trip	\$
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Project Management/Coordination

Project Management & Coordination: Coordination of personnel and activities, consultation & report review	50 Hours	\$ /Hour	\$
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TOTAL SUM NOT TO EXCEED			\$
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All Unit Prices will remain in force for the duration of the contract. Reimbursable expenses such as, but not limited to, travel and subsistence, computer time, postage, telephone charges (both local and long distance) to be performed in connection with the project must be included in the unit prices.

ATTACHMENT D: RESPONDER FORMS

**STATE OF MINNESOTA
VETERAN-OWNED PREFERENCE FORM**

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the State will award a 6% preference on State procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

- 1) The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

- 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

Claim the Preference

By signing below, I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (Supported By Attached Documentation)

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone: _____
Printed Name: _____ Title: _____

Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.

Workforce and Equal Pay Declaration Page

This form is **required for all businesses** executing government contracts under the following:

1. Select one:

- Businesses executing a contract with **State or Metropolitan agencies** in excess of \$100,000 ([Workforce Certificate](#)) and if applicable \$500,000 ([Equal Pay Certificate](#))
- Businesses executing a contract with **University of Minnesota** for general obligation bond funded capital projects in excess of \$100,000 ([Workforce Certificate](#)) and if applicable \$500,000 ([Equal Pay Certificate](#))
- Businesses executing a contract with **Political Subdivisions** for general obligation bond funded capital projects in excess of \$250,000 ([Workforce Certificate](#)) and if applicable \$1,000,000 ([Equal Pay Certificate](#))

Select all that apply:

2. We are a Certificate holder:

- Workforce Certificate under the name: _____
- Equal Pay Certificate under the name: _____

3. We are applying/have applied for the following certificate(s):

- Workforce Certificate Application date (MM/DD/YYYY): _____
- Equal Pay Certificate Application date (MM/DD/YYYY): _____

4. We have not applied for one or both certificates:

- Our Company does not yet have a Workforce Certificate or Equal Pay Certificate. We acknowledge that a Workforce and, if applicable, Equal Pay Certificate, or approved exemption by MDHR is required before a contract can be executed.

5. We are Exempt:

- We attest to MDHR that we have not employed 40 or more employees on a single day during the prior 12 months in Minnesota or the state in where we have our primary place of business. MDHR may request the names of our employees during the previous 12 months, the date of separation, if applicable, and the current employment status and count.

6. Business Information

Vendor/Supplier ID	Business Name	Name of Contracting Agency
Authorized Signatory Name	Title	Date
Signature	Email	Phone

For assistance with this form, email the Minnesota Department of Human Rights Compliance.MDHR@state.mn.us



State of Minnesota Contract

SWIFT Contract No.: TBD

This Contract is between the State of Minnesota, acting through the Department of Military Affairs, Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173 (“State”) and [TBD] whose designated business address is [TBD] (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. State issued a solicitation identified as Request For Proposal for Construction Testing & Inspecting Services for Renovation and Expansion of the Marshall Minnesota National Guard Armory, (Project No. 21102) on [TBD] (“Solicitation”);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- 1.1 Effective date. [TBD], or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.
- 1.2 Expiration date. [TBD], or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to three (3) additional one (1) year periods, through a duly executed amendment.

2. Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfy action of the State.

The Contractor, who is not a State employee, shall: Perform the duties specified in Exhibit C, Specifications, Duties and Scope of Work, which is attached and incorporated into this contract.

3. Representations and Warranties

- 3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the State is empowered to engage such assistance as deemed necessary.

3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.

3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

4. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

5. Consideration and Payment

5.1 Consideration. The State will pay for performance by the Contractor under this Contract as follows:

5.1.1 Compensation. The Contractor will be paid a sum not to exceed \$TBD (TBD and No/100 Dollars)', in accordance with the breakdown of costs as set forth in Exhibit D: Breakdown of Cost.

5.1.2 Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed [TBD].

5.2 Payment.

5.2.1 Invoices. Submit invoices to nq.mn.mnarng.mbx.fmo-contracting@army.mil. Original hard copy may be mailed to the Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173. Invoices shall be in accordance with the breakdown of costs contained in Exhibit D, Breakdown of Costs, which is attached and incorporated into this contract. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and no more frequently than monthly.

5.2.2 Conditions of payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

5.2.3 *Federal funds*. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

6. Authorized Representative

The State's Authorized Representative is Mr. Paul Kempton, Project Manager, or his successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative. The Contractor's Authorized Representative is [TBD, title] at the following business address and telephone number: [TBD], or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Breakdown of Cost
- Exhibit E: Special Conditions for Contract Work Involving Federal Funds

1. State Encumbrance Verification
Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: Ms. Sarah Posterick
Signature: _____
Title: Contracts Specialist Date: _____
SWIFT Contract No.: TBD

2. Contractor
TBD
The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____
Signature: _____
Title: _____ Date: _____

3. State Agency
With delegated authority

Print name: Major General Shawn P. Manke
Signature: _____
Title: Adjutant General Date: _____

4. Commissioner of Administration
As delegated to The Office of State Procurement

Print name: _____
Signature: _____
Title: _____ Date: _____

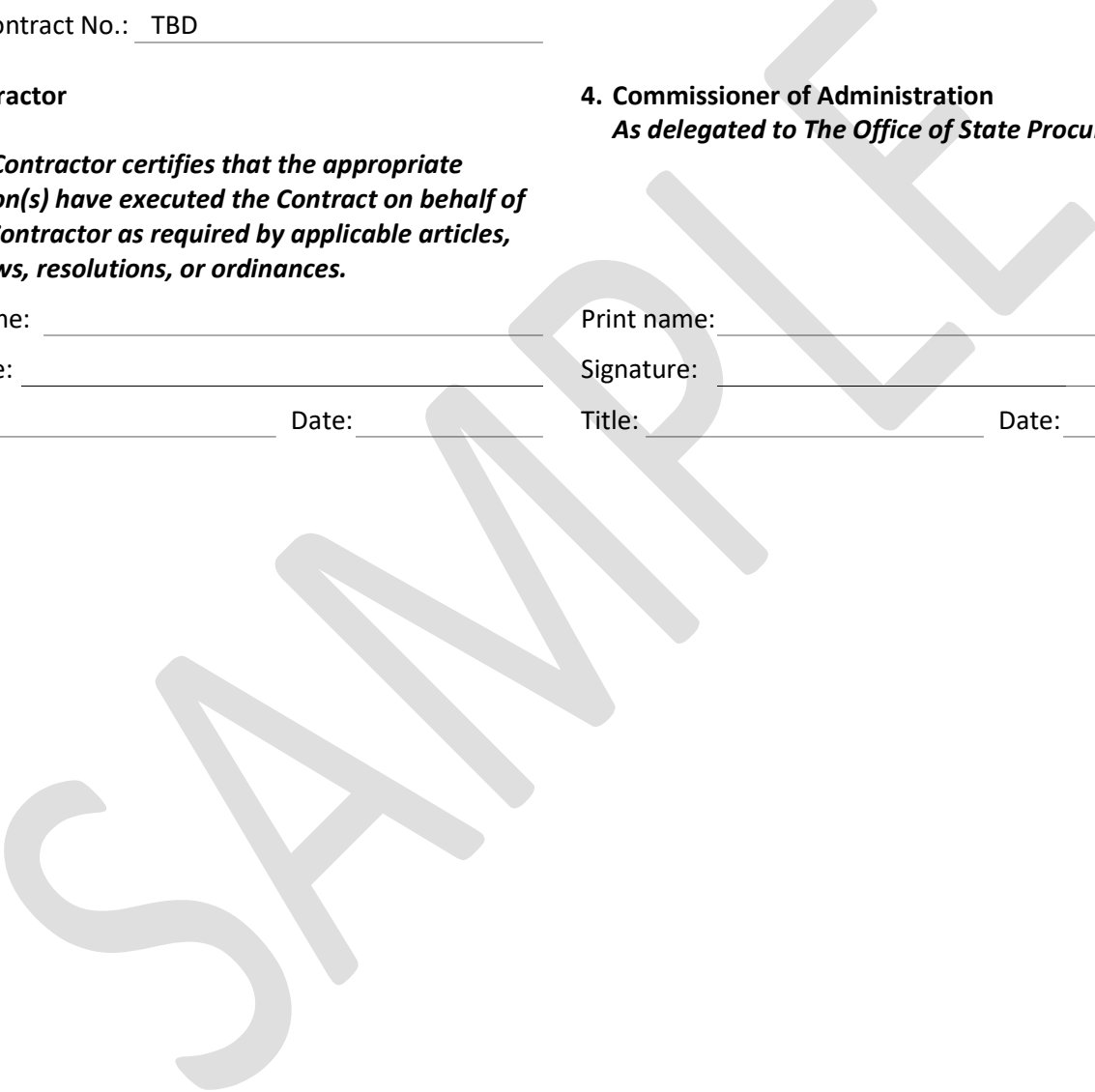


Exhibit A: Contract Terms

Construction Testing & Inspecting Services for
Renovation and Addition of the
Marshall Minnesota National Guard Armory
(Project No. 21102)

SAMPLE

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1 Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D, Supplement 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D, Supplement 1 for a list of minimum invoice requirements.

2. Assignment, Amendments, Waiver, and Contract Complete.

2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

2.4 Contract Complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

3. Termination.

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Breach. The State may terminate this Contract, with cause, upon 30 days' written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this Contract. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The

State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification.

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

7. Foreign Outsourcing of Work Prohibited.

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

8. Subcontracting and Subcontract Payment.

8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by the State's Authorized Representative can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of the State's Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were not

already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. Data Disclosure.

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

10. Government Data Practices.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

11. Intellectual Property Rights.

11.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

11.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

11.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

11.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.

11.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

11.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

11.4 Obligations.

11.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.

11.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

11.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the State’s opinion is likely to arise, the Contractor must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

12. Copyright.

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

13. Contractor's Documents.

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

14. State Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

15. Diverse Spend Reporting.

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

16. Publicity and Endorsement.

16.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

16.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

17. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

18. Federal Funds.

- 18.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.
- 18.2 Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's

19. Contingency Fees Prohibited.

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

20. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

21. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

22. Affirmative Action Requirements

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

- 22.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
- 22.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- 22.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- 22.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for

which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

22.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

22.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

22.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

22.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

22.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

22.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

23. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

24. Nonvisual Access Standards.

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

25. Survival of Terms.

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Exhibit B: Insurance Requirements

Construction Testing & Inspecting Services for
Renovation and Expansion of the
Marshall Minnesota National Guard Armory
(Project No. 21102)

SAMPLE

Exhibit B: Insurance Requirements

INSURANCE REQUIREMENTS

- A. The Contractor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contractor shall maintain such insurance in force and effect throughout the term of the Contract.
- B. The Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, the Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, the Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** amounts are as follows:

\$100,000 - Bodily Injury by Disease per employee
\$500,000 - Bodily Injury by Disease aggregate
\$100,000 - Bodily Injury by Accident

If Minnesota Statute 176.041 exempts the Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, the Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** The Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed under the Contract. Insurance **minimum** amounts are as follows:

\$2,000,000.00 - per occurrence
\$2,000,000.00 - annual aggregate
\$2,000,000.00 – annual aggregate - Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal & Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
State of Minnesota, named as an Additional Insured, to the extent permitted by law

3. **Commercial Automobile Liability Insurance:** The Contractor is required to maintain insurance protecting the Contractor from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the Contractor will require the subcontractor to maintain Commercial Automobile Liability. Insurance **minimum** limits are as follows:

\$2,000,000 - per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance:** This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Contractor's professional services required under this Contract.

The Contractor is required to carry the following **minimum** amounts:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and the Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by the Contractor to fulfill this requirement.

C. **Additional Insurance Conditions:**

- The Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the Contractor's performance under this Contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- The Contractor is responsible for payment of Contract related insurance premiums and deductibles;

- If the Contractor is self-insured, a Certification of Self-Insurance must be provided the State;
 - Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4. above;
 - Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A-(minus), Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota; and
 - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State will reserve the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to State's authorized agent upon written request.
- E. The Contractor is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the Contract.

Exhibit C: Specifications, Duties, and Scope of Work

Construction Testing & Inspecting Services for
Renovation and Addition of the
Marshall Minnesota National Guard Armory
(Project No. 21102)

SAMPLE

Exhibit C: Specifications, Duties, and Scope of Work

1. Project Overview and Goals.

The Department of Military Affairs intends to renovate and expand the Marshall Minnesota National Guard Armory located at 500 Timmerman Drive, Marshall, MN 56258. The scope of work includes, but is not limited to, the following: removal and replacement of interior concrete slabs on grade, removal and replacement of exterior concrete slabs on grade, removal and replacement of bituminous paved parking areas, removal and replacement of concrete curb and gutter, site grading and restoration, infilling existing openings in masonry walls, cutting new openings in existing masonry walls, installing new steel lintels over new wall openings, new concrete foundation elements, adding new steel framing members to the existing roof structure, addition of a steel framed mechanical penthouse, installation of drilled aggregate piers to stabilize existing soils, addition of a new concrete vault, addition of masonry walls and steel roof structure, insulating the interior sides of exterior walls to comply with current energy codes, and upgrading the mechanical and electrical systems. Construction testing and inspecting services are necessary to complete this project.

2. Sample Tasks and Deliverables.

Provide construction inspecting and testing services as indicated in Exhibit B, Breakdown of Costs. Tasks include the following:

1. Structural Requirement: The Testing and Inspecting Agency will perform seventy (70) nuclear soil density tests in accordance with ASTM D6938 on subgrade and fill material. Tests will be performed to verify that minimum compaction as specified in the contract documents has been achieved.
2. Structural Requirement: Ground improvements (rammed aggregate piers) are to be observed by the Testing and Inspecting Agency to verify the site has been prepared correctly.
3. Structural Requirement: Backfill and subgrade placement associated with the building are to be observed by the Testing and Inspecting Agency to verify the use of proper material, lift thickness, and compaction.
4. Structural Requirement: Testing and Inspecting Agency is to conduct concrete strength, slump, temperature, and air content tests and cast a set of four (4) cylinders. The concrete test cylinders will be returned to the laboratory for standard curing and compression testing. One (1) cylinder of each set of four (4) will be broken at the laboratory at the 7-day age and three (3) will be broken at the 28-day age to obtain the compressive strength. For the building concrete, one set of test cylinders shall be cast for each 50 cubic yards of concrete placed, or for each pour if less, for each type of concrete mix placed. A minimum of three tests and sets of cylinders are to be cast for the equipment platform topping.
5. Structural Requirement: Testing and Inspecting Agency is to witness the installation of all post-installed anchors and dowels in concrete to verify installation is in accordance with the manufacturer's recommendation, requirements of ICC reports, and construction documents.
6. Structural Requirement: Testing and Inspecting Agency is to inspect concrete formwork, reinforcement placement, and curing and placement techniques for the building concrete. The Testing and Inspecting Agency is to verify formwork dimensions and locations are in accordance with the construction documents, reinforcement sizes, spacings, lap lengths, and cover dimensions are in accordance with the construction documents, and proper curing, placement, hot and cold weather requirements are followed by the construction contractor. Inspections are to be completed per each concrete placement.
7. Structural Requirement: Testing and Inspecting Agency is to inspect concrete masonry wall construction to verify mortar, grout, steel embed plates, and steel reinforcement are placed in accordance with the construction documents. Testing and Inspecting Agency is to also verify hot and cold weather requirements are being followed. Inspections are to be per grout pour.

8. Structural Requirement: Testing and Inspecting Agency is to test grout used for core filling masonry walls to verify it meets the project specifications. Tests are to be in accordance with ASTM C1019. Compressive strength, slump, and temperature of grout sample and ambient temperature shall be measured at the time of grout placement. Compressive strength shall be measured at 7 and 28 days. Three (3) specimens shall be tested at each age. One (1) set of tests shall include three (3) tests at 7 days and three (3) tests at 28 days. Unless noted otherwise, each grout pour, including grouting existing cores, shall be tested.
9. Structural Requirement: Testing and Inspecting Agency is to test mortar used in conjunction with masonry to verify it meets the project specifications. Tests are to be in accordance with ASTM C780 Annex A4 – Mortar Aggregate Ratio Testing. A total of four (4) sets of tests are to be conducted. One (1) test includes three (3) specimens. Sampling for tests is to be conducted on different days.
10. Structural Requirement: Testing and Inspecting Agency is to test concrete masonry units (cmu) in accordance with ASTM C140 for conformance with the requirements of this specification and the construction documents. Unit dimensions and absorption are to be measured. A total of two (2) tests are to be conducted. One (1) test is to be conducted to represent the 8 inch thick wall and one (1) test is to be conducted to represent the 12 inch thick walls. One (1) test includes three (3) specimens.
11. Structural Requirement: Testing and Inspecting Agency is to test masonry and mortar panels (primis tests) for compressive strength in accordance with ASTM C1314. A total of three (3) tests are to be conducted. Two (2) tests are to be conducted to represent the 8 inch thick wall and two (2) tests are to be conducted to represent the 12 inch thick walls. One (1) test includes three (3) specimens. Specimens are to be tested ungrouted.
12. Structural Requirement: Installation of all post-installed masonry anchors and dowels shall be witnessed by the Testing and Inspecting Agency to verify installation is in accordance with the manufacturer's recommendation, requirements of ICC reports, and construction documents.
13. Structural Requirement: All field welded and bolted structural steel connections are to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents.
14. Structural Requirement: All steel details are to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents.
15. Structural Requirement: All new metal deck and all fastening of new structure to new and existing metal deck is to be inspected by the Testing and Inspecting Agency to verify conformance with the construction documents. Testing and Inspecting Agency is to verify the following: deck type, fastener size, fastener pattern, deck span, and deck overlap.
16. Miscellaneous Requirement: Testing and Inspecting Agency is to inspect openings and penetrations in fire-resistive wall and ceiling assemblies for adequate fire-stopping or sealing.
17. Miscellaneous Requirement: Testing and Inspecting Agency is to inspect sealant around new window openings and around the new main entrance door and windows for conformance with the construction documents.
18. Miscellaneous Requirement: Testing and Inspecting Agency is to review the project drawings and specifications and correspond periodically with the project engineer about drawing details, test results, and construction contractor performance.
19. Miscellaneous Requirement: The project engineer will not be on-site frequently. Therefore, it is expected that the Testing and Inspecting Agency will have a regular presence on-site and their on-site staff will fully understand the project drawings and specifications.
20. Civil Requirement: The Testing and Inspecting Agency will perform nuclear soil density tests in accordance with ASTM D6938 on utility trench backfill. One (1) test is to be conducted for each 2' of trench depth at a minimum of 2 locations along the utility trench. Tests will be performed to verify that minimum compaction as specified in the contract documents has been achieved.

21. Civil Requirement: Grading, Base, and Reclamation Construction Items: Provide gradation testing and test rolling observation (of subgrade & aggregate base) in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
22. Civil Requirement: Concrete testing: Provide air content, slump, temperature, and compressive strength testing in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
23. Civil Requirement: Bituminous testing: Provide testing of Asphalt Binder Content, Mixture Properties, and testing of Core Density and Thickness in accordance with MnDOT Schedule of Materials Control for 2018 Standard Specifications.
24. One copy of all test results will be furnished to:
 - a. Construction Contractor: To be Determined
 - b. Building Code Official: To be Determined
 - c. Consultants:
 - Mr. Nathan Thomas, Structural Engineer
Facilities Management Office
Telephone: 320.616.6085
Email: nathan.c.thomas15.nfg@army.mil
 - Mr. Michael Rude, Civil Engineer
Facilities Management Office
Telephone: 320.616.6157
Email: michael.e.rude.nfg@army.mil
 - d. Mr. Paul Kempton, Project Manager and Owner
Facilities Management Office
Telephone: 320.616.6163
Email: paul.e.kempton.nfg@army.mil
 - e. All test reports and results shall be uploaded to owner provided Procore software with notification issued to Construction Contractor, Consultants and Owner representative.
25. If at any time there are failing test results or observations are made that do not appear to be in accordance with the plans and specifications, Contractor will notify the POCs listed above immediately after testing. Retests will be charged to the Construction Contractor.
26. Inspection reports are to contain photos of inspected work along with specific information of what was witnessed during the inspection. The following is a general example of what would be acceptable; #4 epoxy coated bars were placed at 12 inches on center each way with 3 inch bottom cover. To the best of our knowledge, all rebar was placed according to the plans and specifications. Without being superseded with specific information the following is an example of what would not be acceptable; to the best of our knowledge, all rebar was placed according to the plans and specifications.
27. The following documents are incorporated and form a part of this Contract:
 - a. Specifications for the work
 - b. Drawings for the work
 - c. All addenda for the work

3. Skills.

All personnel provided by Contractor shall be fully qualified and authorized under State and local law to perform the services required by the contract.

Exhibit D: Breakdown of Cost

Construction Testing & Inspecting Services for
Renovation and Addition of the
Marshall Minnesota National Guard Armory
(Project No. 21102)

SAMPLE

Exhibit D: Breakdown of Cost

Services and quantities are approximate and will vary with Contractor's means, methods, and scheduling.

DESCRIPTION	ESTIMATED QUANTITY	UNIT RATE	TOTAL RATE
Utility Installation			
Soils Proctor	1 Test	\$ /Test	\$
Nuclear Soil Density Test	30 Tests	\$ /Test	\$
Consultation & Reporting	8 Hours	\$ /Hour	\$
Grading and Base			
Gradation	4 Tests	\$ /Test	\$
Observe Test Rolling (Subgrade & Base)	2 Tests	\$ /Test	\$
Consultation & Reporting	12 Hours	\$ /Hour	\$
Concrete Paving			
Air Content	10 Tests	\$ /Test	\$
Slump	3 Tests	\$ /Test	\$
Temperature	10 Tests	\$ /Test	\$
Compressive Strength (set of 3)	5 Tests	\$ /Test	\$
Consultation & Reporting	12 Hours	\$ /Hour	\$
Bituminous Paving			
Asphalt Binder Content	2 Test	\$ /Test	\$
Mixture Properties	2 Test	\$ /Test	\$
Core Density and Thickness	2 Test	\$ /Test	\$
Consultation & Reporting	4 Hours	\$ /Hour	\$
Structural Requirement - Soils Associated with the Building (including stoop)			
Nuclear Soil Density Test (ASTM D6938) & Report	70 Tests	\$ /Test	\$
Observations of Ground Improvements & Report	240 Hours	\$ /Hour	\$
Observation of Backfill and Subgrade Placement & Report	100 Hours	\$ /Hour	\$
Structural Requirement - Concrete & Masonry Associated with the Building			
Observation of Post-Installed Concrete Anchor and Dowel Installation & Report	20 Hours	\$ /Hour	\$
Air, Slump, Temperature, Unit Weight, & Casting of sets of 4 Concrete Cylinders per set Test & Report	35 Sets	\$ /Set	\$
Curing & Compression Test & Reports of each Concrete Cylinders	140 Tests	\$ /Test	\$

Inspection of Concrete Formwork, Steel Reinforcement, Curing and Placement Techniques, Hot & Cold Weather Requirements & Report	160 Hours	\$ /Hour	\$
Mortar Test (ASTM C780) & Report	4 Sets	\$ /Set	\$
Grout Test (ASTM C1019) & Report	35 Sets	\$ /Set	\$
Inspect placement of Masonry Mortar, Grout, Steel Embed Plates, Steel Reinforcement, and Hot & Cold Weather Requirements & Report	240 Hours	\$ /Hour	\$
Observation of Post-Installed Masonry Anchor and Dowel Installation & Report	200 Hours	\$ /Hour	\$
Test Concrete Masonry Units (ASTM C140) & Report	2 Sets	\$ /Set	\$
Test Masonry and Mortar Panels (Prism Tests) (ASTM C1314) for Compressive Strength & Report	4 Sets	\$ /Set	\$

Structural Requirement - Steel

Inspect Structural Steel Field Welded and Bolted Connections & Report	80 Hours	\$ /Hour	\$
Inspect Metal Deck & Report	32 Hours	\$ /Hour	\$
Inspect Steel Details & Report	60 Hours	\$ /Hour	\$

Miscellaneous

Inspect openings and penetrations in fire-resistive wall and ceiling assemblies for adequate fire-stopping and sealing & Report.	2 Hours	\$ /Hour	\$
Inspects sealant around new window openings and main vestibule exterior door and windows & Report	2 Hours	\$ /Hour	\$
Drawing Review and Correspondence with Project Engineer	120 Hours	\$ /Hour	\$
Concrete Slab Moisture Testing for Floor Finishes per ASTM F1869 and ASTM F2170	20 Hours	\$ /Hour	\$

Travel

Trip Charge (Travel Time & Mileage)	200 Trips	\$ /Trip	\$
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Project Management/Coordination

Project Management & Coordination: Coordination of personnel and activities, consultation & report review	50 Hours	\$ /Hour	\$
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TOTAL SUM NOT TO EXCEED			\$
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All Unit Prices will remain in force for the duration of the contract. Reimbursable expenses such as, but not limited to, travel and subsistence, computer time, postage, telephone charges (both local and long distance) to be performed in connection with the project must be included in the unit prices.

Exhibit E: Special Conditions for Contract Work Involving Federal Funds

Construction Testing & Inspecting Services for
Renovation and Expansion of the
Marshall Minnesota National Guard Armory
(Project No. 21102)

SAMPLE

Exhibit E: Special Conditions for Contract Work Involving Federal Funds

To the extent applicable, the State is required to insert the substance of the following provisions in all contracts, unless State laws or regulations offer more protection.

Section 801. Applicable Law.

This MCA is incidental to the implementation of a Federal program. Accordingly, this MCA and associated appendices shall be governed by and construed according to federal law as it may affect the rights, remedies, and obligations of the United States.

Section 802. Governing Regulations.

Title 2 Code of Federal Regulations (CFR) Part 200, current NGB-AQ policy, NGR 5-1 or successor CNGB I & M, are hereby incorporated into this MCA by reference as if fully set forth herein and shall govern this Agreement. Attachment A consists of those provisions of part 200 which are terms & conditions commonly applicable to NGB assistance instruments.

Section 803. Nondiscrimination.

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
- b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

Section 804. Lobbying.

- a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Appendix.
- b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Section 805. Drug-Free work Place.

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Section 806. Environmental Protection.

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
- (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- (4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
- (5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

Section 807. Use of United States Flag Carriers.

a. The state covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

Section 808. Debarment and Suspension.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The grantee agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement.

The grantee and subrecipients shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the grantee and subrecipient contract files, and shall be subject to audit by the grantor and Federal/State audit agencies

Section 809. The Infrastructure Investment and Jobs Act (“IIJA”).

Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that the head of each Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Section 810. Uniform Relocation Assistance and real Property Acquisition Policies

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

Section 811. Copeland “Anti-Kickback” Act.

The state covenants and agrees that it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Section 812. Contract Work Hours and Safety Standards Act.

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

Section 813. System for Award Management and Unique Entity Identifier Requirements

The Grantee covenants and agrees to comply with the System for Award Management (SAM) and Unique Entity Identifier Requirements (UEI) as indicated below:

a. Requirement for SAM. You as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this Agreement or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for UEI ID. If you are authorized to make subawards under this Agreement, you:

(1) Must notify potential subrecipients that no entity (see definition in paragraph (c) of this Agreement term) may receive a subaward from you unless the entity has provided its UEI number to you; and

(2) May not make a subaward to an entity unless the entity has provided its UEI number to you.

(3) Definitions. For purposes of this Agreement:

(a) SAM means the official U.S. Government system that consolidated the capabilities of CCR and EPLS. There is NO fee to register in SAM. Entities may register at no cost at the current OMB website. Additional information about registration procedures, updating your recipient account, searching records, as well as user guides and helpful hints may be found at the SAM website.

1. If you had an active record in CCR, you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity record(s) in order for you to be paid or to receive an award or you need to renew your Entity(s) prior to its expiration. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the Entity. To update or renew your Entity records(s) in

SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by typing the UEI number or business name into the search box.

(b) The Unique Entity ID (UEI) is assigned automatically to entities when they request a Unique Entity ID or register on SAM.gov.

(c) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

1. A Governmental organization, which is a State, local Government, or Indian Tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization; and
5. A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or Program for which you received this Agreement and that you as the recipient award to an eligible subrecipient.

(b) The term does not include your procurement of property and services needed to carry out the project or Program.

(c) A subaward may be provided through any legal Agreement, including an Agreement that you consider a contract.

(5) Subrecipient means an entity that:

(a) Receives a subaward from you under this Agreement; and is accountable to you for the use of the Federal funds provided by the subawards

Section 814. Reporting Subawards and Executive Compensation

The Grantee covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in **2 CFR Part 200**:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program.

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.