Part 2 The Works

Section 4: CONDITIONS OF CONTRACT

For

**THE AVANSE IRRIGATION INFRASTRUCTURE PROGRAM**

And

**THE DUBRE IRRIGATION SYSTEM REHABILITATION AND IMPROVEMENTS PROJECT**

June 2017

**Development Alternatives, Inc. /** **Appui a la Valorisation du Potential Agricole Nord Pour la Securite Economique et Environmentale (DAI/AVANSE)**

Funded by the United States Agency for International Development / Haiti (USAID/H)

Contract # AID 521-C-13-00006

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# 1. CONDITIONS OF CONTRACT

## CONTRACT DATA

1. The Funding Agency is United States Agency for International Development (USAID) Mission in Haiti.
2. The Contractor is Development Alternatives Incorporated (DAI)/ Appui a la Valorisation du Potential Agricole Nord Pour la Securite Economique et Environmentale (DAI/AVANSE)
3. DAI’s point of contact is The Chief of Party (COP), Mr. Jonathan Greenham
4. The Subcontract Administrators for DAI are designed as follows:
   * DAI/Washington Office of Contracts, Andrea Falso
5. The Address of DAI is 7600 Wisconsin Ave, Suite 200, Bethesda MD 20184
6. Telephone: , E-mail:

[Jonathan\_Greenham@dai.com](mailto:Jonathan_Greenham@dai.com), Chief of Party

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1. The Activity Title is **THE DUBRE IRRIGATION SYSTEM REHABILITATION AND IMPROVEMENTS**
2. The Technical Representatives are the Engineers and the Engineer’s Representatives, as follows:
   * TBD
3. The Subcontractor’s authorized subcontract administrators, who are authorized to bind the subcontractor are as follows:
   1. [INSERT, the subcontractor’s names and titles of those people they have authorized to bind their company to execute this subcontract, and any modifications thereof]
4. The Currency is the Haitian Gourdes
5. The Subcontract Commencement Date is the signature date of the subcontract agreement.
6. The Site Possession Date is TBD
7. The Retention Period for Defects and Liability is 60 days after Final Completion.
8. The Subcontract is **not** subject to Price Adjustments for wage, material and/or equipment escalation modifying the unit prices.
9. A Mobilization payment of up to a maximum of maximum 15% of the subcontract Price will be paid to the Subcontractor upon complete and satisfactory receipt of deliverables and receipted materials outlined in Section 8 of this subcontract agreement.
10. A Performance Security (specifically a Bank Guarantee) is required, in a form of security acceptable to the DAI to the value of 15% of the Subcontract Agreement, as outlined in the terms and conditions herein.
11. Liquidated damages shall be applied, as defined in the terms and conditions herein in Section 11. The daily value of liquidated damages shall be $1000.00 per day. The maximum value of liquidated damages is 10% the total value of the subcontract. Liquidated damages shall begin after 15 days of inexcusable delays.
12. The Subcontractor shall maintain the following amounts of insurance as per Section 12 of this subcontract agreement and the Defense Based Act (DBA) insurance requirement outlined in Special Provisions.
13. General Liability insurance (personnel and equipment) in the amount of: at least $500,000 per claim/occurrence
14. Equipment Insurance in the amount of : $50,000
15. Workman’s Compensation Insurance (personal injury or death)
    1. of the subcontractor’s employees: $15,000
    2. of other people: $7,500
16. Defense Based Act (DBA) Insurance is required.
17. The Subcontractor’s key personnel shall include the following:
    * TBD
18. The Subcontractor’s key equipment shall include the following:
    * TBD

These Contract Data are further defined in the terms and conditions below, have been read and fully understood by the Subcontractor, as indicated by the signature affixed above.

This is a Subcontract issued under a United States Federal Government contract. The Subcontractor agrees to comply with all statutes and regulations, including the Federal Acquisition Regulations, applicable to the Contractor's prime contract with the Funding Agency.

Unless set forth herein, the Subcontractor agrees that: (1) the Subcontractor shall perform all acts necessary to assist and allow the Contractor to comply with all obligations under the AVANSE Project including the clauses and provisions incorporated herein by reference; (2) the Subcontractor will refrain from any act that would cause the Subcontractor or the Contractor to be in violation of the USAID AVANSE contract, or any of the clauses incorporated herein by reference, or any other applicable law or regulation; (3) any provisions or obligations required by DAI that are deemed to be included herein; (4) the Subcontractor shall perform its obligations under the Subcontract in compliance with the clauses incorporated herein by reference, as well as any other provisions of applicable law or regulation.

# GENERAL CONDITIONS

## Definitions

* **Architect and Engineer**: also referred to as Design Architect or Engineer means the individual or organization who furnished the design, which includes but not limited to the construction drawings and technical specifications,
* **Bid/Tender**: The Bid and Tender refer to the actual (1) Technical and, (2) Price offer made by the Contractor to carry out the work encompassed by the Contract and all Contract Documents;
* **The Contractor** means DAI **Global, LLC.** (DAI) of, a corporation organized and existing under the laws of the State of Delaware, with its headquarters office located at 7600 Wisconsin Avenue, Suite 200, Bethesda, MD 20814 (hereinafter referred to as “Contractor” or “DAI”), with local representative as stated in the Contract Data.
* **The “Commencement Date”** is the date provided in the Contract Data of the Subcontract for the intended start of the work.
* **The “Construction Drawings**” are the graphical or pictorial portions of the subcontract agreement showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules and diagrams.
* **FAR**: United States Government Federal Acquisition Regulations
* **The “Funding Agency”** means the organization, entity, or persons who have entered into a contract or agreement with DAI to achieve a development objective. DAI is responsible to manage the funding provided by the Funding Agency. The Funding Agency is provided in the Contract Data.
* **The “Engineer”, or Engineer’s Representative**, means the person whose services have been engaged by DAI to technically monitor and administer the Subcontract as provided therein, as will be notified in writing to the Subcontractor or stated in the Contract Data of the Subcontract.
* **MARNDR**: The Ministere de l’Agriculture des Resources Naturelles et Du Development Rural
* **The “Obligation Value” means** the sum agreed in the subcontract as the maximum amount of funding available towards the subcontract value. The Obligation Value may be increased to the total subcontract value as funding from the Funding Agency becomes available, or the subcontractor continues to perform satisfactorily.
* **The “Owner”** means the individual or organization that will own, use and be responsible for operations and maintenance of the completed Work.
* **The “Period of Performance”** is the period stated in the Contract Data of this Subcontract.
* **Program**: The Construction Schedule provided by the Contractor to DAI/AVANSE for review and then approved by DAI/AVANSE. The Program shall be updated monthly by the Contractor and provided to the Engineer prior to each monthly meeting;
* **“Site”** means the land and other places on, under, in or through which the Work or Temporary Work are to be constructed.
* **Site Inspector**: The Engineer’s Representative on-site so designated in writing to the Contractor along with the Engineer’s specific delegated responsibilities;
* **“Subcontract"** means the written agreement between the Contractor (DAI) and the Subcontractor, to which these Conditions are annexed, and includes any written modifications signed by both parties. Unless specifically stated in the agreement, the subcontract agreement does not include the advertisement or initiation to bid, instructions to bidders, sample formats or other information furnished by the Owner in anticipation of receive bids or proposals, the subcontractor’s bid or proposal, or portions of any addenda related to bidding requirements.
* **The “Subcontractor”** means the person or corporate body whose bid to carry out the Work has been accepted by the Contractor who in this case is Development Alternatives Incorporated (DAI). Any subcontractors that the Subcontractor hires to perform a portion of work are referred to as “2nd-tier subcontractors”
* **“Subcontract Price”** means the total price agreed in the Subcontract as payable to the Subcontractor for the execution and completion of the Work and for remedying of any defects therein in accordance with the Subcontract. This is calculated by multiplying the quantities of work by the unit price for each work item.
* **The “Subcontracts Administrator(s)”** are the only authorized individuals designated by DAI as authorized to bind DAI and Subcontractor contractually. These individuals are the only authorized individuals who may authorize funding, change orders, subcontract modifications, or be a signatory to the subcontract agreement. A list of the Subcontract Administrators can be found in the Contract Data.
* **“Subcontract Documents”** are those documents that form the Agreement between DAI, the Contractor, and the Subcontractor. These documents consist of the Conditions of Contract, all clauses outlined in this document, Special Provisions, General Provisions, and all Appendices and documents incorporated by reference or attachment.
* **“Submittals”** are those documents or samples that are submitted for approval to demonstrate the way the Subcontractor proposed to conform to the information given and the design concept expressed in the Drawings and Specifications. Submittals include, but are not limited to, shop drawings, product data sheets, and material or application samples.
* **The “Technical Specifications” or “Specifications”** are that portion of the subcontract agreement consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the work, and performance of related services.
* **“Temporary Work”** shall include items to be constructed which are not intended to be permanent part of the Work.
* **“Unit Price”** is a specified quantity of materials or work that bears a specific price. The unit price includes all of the subcontractors costs included in completing one unit.
* **USAID**: United States Agency for International Development / Haiti (USAID/Haiti);
* **“The Work”** means the Work defined in the “Statement of Work” to be executed and completed under the Subcontract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Subcontractor to fulfill the Subcontractor’s obligations. The Work may constitute the whole or part of the Project.

## The Subcontract

The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Subcontract may be amended or modified only by a modification. The Subcontract shall not be construed to create a contractual relationship of any kind (1) between the Subcontractor and the Architect or Engineer hired for the design of the Work, (2) between the Owner and the Subcontractor or any of his or her subcontractors, (3) between the Owner and the Design Architect or Engineer, (4) between any persons and entities other than DAI and the Subcontractor, or (5) between the Funding Agency and the Subcontractor. The Design Architect or Engineer shall, however, be entitled to performance and enforcement of obligations under the Subcontract intended to facilitate the performance of the Design Architect or Engineer’s duties.

## Documents and Precedence

The documents listed below, together with any modifications issued under this Agreement, constitute the Subcontract Documents of this agreement. For the purposes of establishing obligations and the resolution of ambiguities in the Subcontract Documents, the following order of precedence shall prevail:

1. Subcontract Agreement
2. The Bid Form
3. Appendix A, Special Provisions
4. Appendix B, General Provisions
5. Appendix C, Scope of Work
6. Appendix D, Construction Drawings
7. Appendix E, Schedule of Deliverables
8. Appendix F, Priced Bill of Quantities

## Specifications and Drawings for Construction

*(SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) ALTERNATE I (APR 1984), 52.236-21)*

1. The Subcontractor shall keep on the worksite a copy of the drawings and specifications and shall at all times give the Engineer or Engineer’s Representative access thereto. Additionally, the subcontractor will have at site photographs for at least past seven days; the seven days are to include holidays or other non-working days. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Engineer, who shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. The Engineer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
2. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Project Manager is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Engineer, unless otherwise expressly stated.
3. Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this subcontract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
4. Shop drawings means drawings, submitted to DAI by the Subcontractor, Subcontractor, or any lower tier Subcontractor pursuant to a construction subcontract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the Work required by the subcontract. DAI may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this subcontract.
5. If this subcontract requires shop drawings, the Subcontractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Engineer without evidence of the Subcontractor's approval may be returned for resubmission. The Engineer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate DAI's reasons therefore. Any Work done before such approval shall be at the Subcontractor's risk. Approval by the Engineer shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this subcontract, except with respect to variations described and approved in accordance with (f) below.
6. If shop drawings show variations from the subcontract requirements, the Subcontractor shall describe such variations in writing, separate from the drawings, at the time of submission.
7. The Subcontractor shall submit to the Engineer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Engineer and one set will be returned to the Subcontractor. Upon completing the Work under this subcontract, the Subcontractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

The terms "approved by," "acceptable to," or "satisfactory to" the Engineer indicate a general evaluation for compliance with the requirements of and information in the subcontract, including Appendices, and for conformance with the design concept; however, the use of these terms do not relieve the Subcontractor of any responsibility to supervise or direct the performance of the Work, nor do they assign any duty or authority to the Engineer to supervise or direct the performance of the Work.

The organization of the Specifications into divisions, sections and articles, and arrangements of the Drawings shall not control the Subcontractor in dividing the Work among subcontractors nor in establishing the extent of the Work to be performed by a trade.

The Design Architect or Engineer shall be deemed the authors and owners of their respective Construction Drawings and Specifications, and will retain all common law, statutory or other reserved rights, including copyrights. The Subcontractor and his or her subcontractor shall not own or claim a copyright in the Specifications or Drawings. Submittal or distribution to meet official regulatory or Funding Agency requirements or for other purposes in connection with this project is not to be construed as publication in derogation of the design Architect or Engineer’s reserved rights. The Subcontractor may not use the Drawings or Specifications on other projects without the specific written consent of the Owner and the Design Architect or Engineer.

The Subcontractor shall maintain a full set of the Drawings, Specifications, Addenda, Change Orders, and subcontract modifications, in good order, and marked currently to indicate field changes and selection made during construction. The Subcontractor shall also maintain approved Shop Drawings, Product Data, and samples on site, as required as Submittals. These shall be available at all times to the Contractor or the Funding Agency.

The Subcontractor shall perform no portion of the Work for which the Drawings or Specifications require submittals, until the respective submittal has been approved by the Engineer. Review and approval of these submittals by the Engineer is not conducted for the purpose of determining the accuracy or completeness of other details such as the dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remains the responsibility of the Subcontractor.

## Interpretation

In interpreting the conditions of subcontract, headings and cross-cross references between clauses have no significance. Words have their normal meaning under the language of the Subcontract unless specifically defined.

## Language Requirement

All designs, work plans, reports and other deliverables shall be provided in English or French. Communications.

The communications between parties which are referred to in this Subcontract are fully effective only when confirmed in writing. A notice is effective only when it is received. All communications shall be in English language. “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

All communications shall be addressed to the DAI Chief of Party. A copy may be provided to the Project Engineer or Subcontract Administrators.

Whenever the subcontract requires giving or issuing approvals, certificates, consents, requests for change orders, modifications, these communications shall be in writing and delivered by hand or sent by courier, or transmitted using any of the agreed systems of electronic transmission, i.e. via email. Approvals, certificates, consents, and modifications shall not be unreasonably withheld or delayed.

All written communications shall be entitled with the Project Title, as outlined in the Contract Data.

# TYPE OF SUBCONTRACT

## Fixed Unit Prices and Subcontract Price

In consideration for undertaking this Work, the Contractor shall pay the Subcontractor for the Work satisfactorily performed and approved calculated by multiplying the actual completed quantities, as certified by DAI’s Engineer by the fixed unit price stated in Appendix G, Priced Bill of Quantities. The total subcontract value is stated in the Contract Data and total payments to the Subcontractor shall not exceed the Subcontract Price and current obligation/committed amount without a written modification to the Subcontract.

The subcontractor shall bear the financial responsibility for any fines, fees, penalties, or corrective costs that result as a consequence of the subcontractor’s failure to meet the national, regional, local, or other city regulations that results in penalties or fines. Any fines, fees, penalties, or corrective costs that are not paid by the Subcontractor directly, shall be deducted from the final Subcontract Price.

## Unit Prices

The Unit Prices shall include, but not limited to, furnishing of all labor, supervision, transportation, materials, tools, equipment, quality control, facilities, crews, housing, meals, repair parts, fuel, loading and offloading, handling, maintenance, testing, security, waste removal, taxes, import duties, insurance, overhead, profit, and other elements required to perform the work units defined in the Statement of Work and the Bill of Quantities.

This Subcontract is not subject to unit price adjustment. The Unit Prices quoted in the Bill of Quantities shall be firm and fixed and not subject to adjustment for the entire period of execution, completion, remedying any parts of the work and until handing over of the work. No revision to prices or any escalation shall be allowed on account of any increase in prices of materials, labor, plant, equipment and overheads, etc. or any other statutory increase during the entire contract period or extended contract period. No additional sums will be payable for any escalation in the cost of materials, equipment or labor, or because of the Contractor's failure to properly estimate or accurately predict the cost or difficulty of achieving the results required.

Any modifications to unit prices shall be done strictly based on an adequately justifiable and approved subcontract modification, approved by the Project Engineer, Chief of Party, and signed by an authorized Subcontract Administrator, and done in compliance with the terms and conditions for a Change Order stated below. The final decision regarding the sufficiency of the evidence is entirely the right of DAI. DAI will not adjust the subcontract price due to fluctuations in currency exchange rates, or due to taxes and duties imposed.

## Bill of Quantities

The quantities in the Bill of Quantities Items are estimated quantities and are not to be taken as a guarantee that the quantities will be carried out in their entirety or that they will not be exceeded.

The Bill of Quantities is used to calculate the total Subcontract Price. The Subcontractor is paid based on the actual quantity of work completed.

## Adjustments to Quantities

The quantities of individual work items may be adjusted based on the actual work carried out but in no circumstances shall the total amount for payment exceed the Subcontract Price without a written modification to the Subcontract. Modifications that would exceed fifteen percent (15%) of an individual line item or that would result in changes that would exceed the Subcontract Price also require the written approval of the DAI Chief of Party and a formal subcontract modification. DAI will not adjust the Subcontract Price due to fluctuations or escalations in currency exchange rates, changes in material or labor unit costs, or due to taxes and duties.

# THE WORK REQUIREMENTS

## The Work Requirements

The Subcontractor shall, during the period specified in the Subcontract, and within the Subcontract Price set forth, execute, and complete all the Work. The Work under this Subcontract shall entail but not be limited to the scope in the Statement of Work outlined in Appendix A.

The Work shall be carried out in a diligent and professional manner utilizing duly qualified personnel. No pleas of ignorance or negligence on the part of the Subcontractor in obtaining clarification shall relieve them of his or her full responsibility in carrying out the Work.

The Subcontractor shall not be relieved of obligations to perform the Work in accordance with the subcontract agreement either by the activities or duties of the design Architect or Engineer in the administration or supervision of the Subcontract, or by tests, inspections or approvals required or performed by persons or entities other than the Subcontractor.

By executing this subcontract agreement, the Subcontractor represents and confirms that the Subcontractor has visited the site, has become familiar with all local conditions under which the Work is to be performed, and has documented in writing any questions, observations, or concerns about the site conditions prior to the execution of this subcontract, and its requirements.

# PRICING AND PAYMENTS

## Mobilization Payment

DAI/AVANSE will, if requested by the Subcontractor, make a mobilization payment to enable him or her to mobilize and start the Work, and is to be used for equipment, materials, and personnel installation expenses required specifically for mobilizing to the work site.

The Mobilization Payment will be approved only once the deliverables as outlined in Section 8 have been received, are acceptable and complete, and DAI receives copies of invoices for the first shipment of materials and equipment to the site, equal to or more than 15% of the contract value. This amount shall not exceed 15% of the cost of the project. The written request shall include invoice proformas from all suppliers for all services, materials and equipment. Payment of such Mobilization will be made under separate certification by the Engineer after execution of the subcontract by the parties hereto.

The Subcontractor may request this amount is writing within 10 days of the signing of the Contract.

## Progress Payments

Monthly progress payments shall be made on the basis of the quantity of Work satisfactorily performed, as proposed by the Subcontractor’s bid, negotiated, and agreed to, as per Appendix G.

Any scrap or unused raw materials are not considered in the actual completed quantity calculations.

## Materials on Site Payments

The Contractor shall (a) receive a credit in the month in which these materials and Plant are brought to the Site and (b) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

No credit shall be given unless the following conditions shall have been met to the Engineer’s satisfaction:

1. The Materials and Plant are in accordance with the specifications for the Works;
2. The materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage, or deterioration;
3. The Contractor’s records of the requirements, orders, receipts, and use of materials and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
4. The Contractor submits a statement of his cost of purchasing, and evidenced with receipts from vendors;
5. The source and origin of the Materials and Plant and the currencies of payment therefor are are in compliance with the GeoGraphic Code stipulated in this Subcontract; and
6. The materials are to be used within a reasonable time.

The amount to be credited to the Contractor shall be the equivalent of 75 percent of the Contractor’s reasonable cost of the Materials and Plant delivered to the Site, as determined by the Engineer after review of the documents;

The amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant, as determined by the Engineer.

Upon installation, materials shall be converted into completion quantities of finished goods, subject to 5.4 Measurement of Works below. Any scrap or unused raw materials are not considered in the actual completed quantity calculations.

## Measurement of Work

The purpose of measuring is to ascertain the work satisfactorily executed by the Subcontractor and therefore determine the amount of the monthly progress payments.

Unless otherwise mentioned in the Bill of Quantities the measurements of works shall be done as specified in the Construction Drawings and Technical Specification.

The Engineer, or Engineer’s Representative, shall only measure work satisfactorily executed or which has been certified as complying with quality standards. The Engineer or Engineer's Representative shall not measure non-conforming work.

The Subcontractor shall submit to the Engineer, or Engineer’s Representative, monthly statements of the estimated quantities and corresponding values of completed work for the period in formats approved by the Contractor. The DAI Engineer shall inspect and certify these quantities of completed work.

The Subcontractor or the Subcontractor’s authorized representative who shall forthwith attend or send a qualified person to assist the Engineer, or Engineer’s Representative, in making such measurement and shall furnish all particulars required by either of them. Should the Subcontractor not attend or neglect to send such agent, or if there is any disagreement in the measurement, the measurement made by the Engineer, or the Engineer’s Representative, approved by him or her shall be accepted as accurate.

## Retention Payment

Ten percent (10%) of all approved payment amounts, including mobilization payments, shall be withheld from each progress payment as a retention amount. 100% of the retention shall be released after Certificate of Completion and Handover, and all requests for defects and liabilities repairs or replacements have been satisfactorily resolved, as mutually agreed by DAI and the Subcontractor.

Any uncompensated liquidated damages, if applicable, for inexcusable delays (as defined in Section 11) in the Subcontractor’s performance will be deducted from the final payment. Any performance bonuses, if applicable, (as defined in Section 11) will be added to the final payment.

## Change Orders and Subcontract Modifications

A request for a time or price (both total price and unit prices) subcontract modification is called a potential change order until both parties agree upon the reasonable change(s) and a change order is approved by a Subcontractor Administrator or until the potential change order is rejected. Approved change orders become effective subcontract modifications and shall be subject to all subcontract terms and conditions herein. Verbal or written instructions provided by the Engineer, the Engineer’s Representative, the Owner, or client, do not constitute modifications, only modifications to the subcontract, signed by a Subcontracts Administrator, constitute modifications.

Change orders shall not be approved for situations when the Subcontractor failed to price the work adequately, when actual construction costs are expected to exceed the fixed price, when the Subcontractor is unable to complete the work per the contract conditions or within the Period of Performance, or other items for which the construction subcontractor is contractually responsible.

Requests for Change Orders shall be submitted in writing, entitled “Notification of Potential Change Order,” and shall include a detailed description, justification, supporting evidence and documents, impact on period of performance, and the proposed price of the potential change order conditions.

The Subcontractor shall submit a Notification of Potential Change Order within a maximum of 20 days of the discovery of Differing Site Conditions or the receipt of instructions from DAI. Failure to notify DAI within these 20 days waives the right of the Subcontractor to be compensated for this work.

The Subcontractor shall notify DAI in writing within 20 days of discovering defective contract documents and within 10 days of incurring costs as a result of defective contract documents. Failure to notify DAI within these time periods waives the right of the Subcontractor to be compensated for this work.

The Contractor may prepare and issue Change Orders or Construction Directives and may authorize minor changes in the work, which do not involve adjustments to the Firm Fixed Price or Period of Performance and are consistent with the intent of the Drawings and Specifications.

## Claims

If the Subcontractor considers himself or herself to be entitled to any additional payment, under any Clause of this Subcontract Agreement or otherwise in conjunction with this Subcontract, as a matter of dispute or controversy (as outlined in Section 12 of this subcontract), and the Subcontractor has already received a response to a Notification of Potential Change Order, the Subcontractor shall give written notice to the DAI Chief of Party, with a copy to the Subcontracts Administrator, of its intention to submit a Claim under the Disputes Clause of this Subcontract. The Subcontractor shall describe the event or circumstances giving rise to the Claim. The notice shall be given as soon as is practicable, and not later than 20 days after the Subcontractor becomes aware, or should be aware, of the event or circumstances.

If the Subcontractor fails to give notice within 20 days, the Period of Performance shall not be extended, nor shall the Subcontractor be entitled to any additional payment, and DAI shall be discharged from all liability in connection with the claim.

The following conditions apply to any and all claims submitted by the Subcontractor:

1. The Subcontractor shall submit any other notices required by the Subcontract, and supporting particulars for the claim, all as relevant to such event or circumstances
2. The Subcontractor must keep such contemporary records, evidence, photographs, etc. as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer, or Engineer’s Representative. Without admitting DAIs liability, the Engineer may, after receiving notice of a claim, monitor the record-keeping and/or instruct the Subcontractor to keep further contemporary records. The Subcontractor shall permit the Engineer to inspect these records, and shall (if instructed) submit copies to the Engineer.

# TIME CONTROL

## Calendar Days

All period of time referred to in this Agreement shall be measured in calendar days, unless otherwise specified.

## Period of Performance

The period of performance for this Subcontract shall begin on the date on the title page and listed in the Contract Data and continue through to its Final Completion listed on the title page, unless terminated earlier by or extended by DAI as provided herein.

## Defects and Liabilities Period

The Subcontractor shall be held responsible for a Defects and Liabilities period, also known as the Warranty Period, in the amount of time stated in the Contract Data. The “Defects Liabilities Period,” begins when the Subcontractor receives the Certificate of Substantial Completion and expires in accordance with the time period specified in the Contract Data. The Defects and Liabilities period extends beyond the Period of Performance listed on the cover page of this subcontract agreement. The period is intended to cover any latent defects (workmanship, materials, components, parts, etc., and does not include normal wear and tear) that may be found to exist in the complete Work, and a period during which the Subcontractor is expect to maintain, repair, remedy defects discovered after Substantial Completion.

## Commencement, Prosecution, and Completion of Work

(***FAR 52.211-10 (APR 1984) Alternate)***

The Subcontractor shall be required to (a) commence the Work under this subcontract immediately upon receiving the Notice to Proceed (b) prosecute the Work diligently, and (c) complete the entire Work ready for use not later than total “Period of Performance” after the commencement of the Work. The time stated for completion shall include mobilization period and final clean-up of the premises.

## Notice to Proceed

The completion date is based on the assumption that the Subcontractor will receive the Notice to Proceed shortly, or immediately, after receipt of an executed Subcontract. The Period of Performance will not be extended by the number of calendar days after the above date that the Subcontractor receives the Notice to Proceed.

The deliverables that are required to be submitted prior to the Notice to Proceed being issued are listed in Appendix F: Schedule of Deliverables.

Any work completed prior to receipt of the Notice to Proceed is done at the subcontractor’s own risk.

Contact information for the DAI Engineer and Engineer’s Representative shall be provided by the DAI COP in the Notice to Proceed.

## Mobilization

Upon receipt of a Notification to Proceed, the Subcontractor shall mobilize all the required personnel (i.e. experienced project manager, supervisors, project engineers, surveyors, foremen, equipment operators and workmen), (minor) equipment, materials, tools and implements in such numbers as will be required to initiate and complete the construction Work.

Five days prior to mobilization, the Subcontractor shall with the engineer, meet with and schedule mobilization with the local Water User’s Association. This includes informing them of arrival and work dates, seeking their permission for access, seeking their permission for Material and Equipment Lay-Down yards, permission for use local water and electricity resources, agreed upon payments for housing space, security staff (guards), etc.

## Suspension or Stop Work

***(Subpart 42.13—Suspension of Work, Stop-Work Orders)***

DAI retains the right to issue a Suspension or Stop-Work Order at any time to the Subcontractor for work that is being performed in a grossly unsatisfactory manner, work that is pending a decision by DAI, Owner, or Client, or work methods that are identified as negligent. Suspension or Stop-work orders shall include—

(1) A description of the work to be suspended;

(2) Instructions concerning DAI’s issuance of further orders for materials or services;

(3) Guidance to the Subcontractor on action to be taken; and

(4) Other suggestions.

Promptly after issuing the stop-work order, the Subcontracts Administrator shall discuss the stop-work order with the Subcontractor and modify the order, if necessary, in light of the discussion. As soon as feasible after a stop-work order is issued, but before its expiration, the Subcontracts Administrator shall take appropriate action to:

(1) Terminate the subcontract;

(2) Cancel the stop-work order (any cancellation of a stop-work order shall be subject to the same approvals as were required for its issuance); or

(3) Extend the period of the stop-work order if it is necessary and if the Subcontractor agrees, issue an extension of the stop-work order through a supplemental order.

## Schedule of Work/Program

The Subcontractor shall submit a Schedule of Work or Program showing the general methods, arrangements, order and timing for all the activities in the Work, with specific emphasis on equipment utilization, labor requirements, and production. The schedule shall be in the form of a Gant Chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. The schedule shall be submitted in accordance with the timeline outlined in Appendix F, Schedule of Deliverables.

Lists of equipment and personnel to be brought on site during and following mobilization are to be given by stage and segment of the Work.

Anticipated quantities of work to be performed each month are to be indicated in the Work Schedule including a bar chart. Technical and management manpower, construction equipment and other resources are to be shown by activity.

If, during the progress of the Work, the quantities of work performed each month fall more than ten (10) percent below those shown in the program, or if the sequence of operations is altered, the Subcontractor shall submit a revised written program within a week of the occurrence.

These schedules shall include the time by which construction drawings, product data, samples and other submittals required by the subcontract will be submitted for approval.

The Subcontractor shall revise such schedules (1) to account for the actual progress of the Work, (2) to reflect approved adjustments in the performance schedule, and (3) as required by the Engineer to achieve coordination with the Work by DAI and any separate subcontractors hired by DAI. The Subcontractor shall submit a schedule which sequences the Work so as to minimize disruption at the job site.

All schedules shall be in the English or French language and any system of dimensions (English or metric) shown shall be consistent with that used in the subcontract. No extension of time shall be allowed due to a delay by DAI in approving such deliverables if the Subcontractor has failed to act promptly and responsively in submitting its deliverables. The Subcontractor shall identify each deliverable as required by the subcontract.

An update of the schedule shall be a provided, at intervals defined in Appendix F, Schedule of Deliverables, showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities. The Subcontractor shall submit to the Engineer or the Engineer’s Representative for approval an updated schedule.

The Engineer’s approval of the schedule shall not alter the Subcontractor’s obligations to perform within the Period of Performance. The Subcontractor may revise the schedule and submit it to the Engineer again at any time. A revised schedule shall show the effect of Change Orders, where applicable.

If, in the opinion of the Engineer, the Subcontractor falls behind the approved schedule, the Engineer shall direct the Subcontractor to take steps necessary to improve its progress, without additional cost to DAI/AVANSE. In such circumstances, the Engineer may require the Subcontractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit schedules in chart form as the Engineer deem necessary to demonstrate how the project will recoup lost time and get back on schedule to finish within the specified period of performance of the Subcontract.

Failure of the Subcontractor to comply with the requirements of the Engineer under this clause shall be grounds for a determination by the Engineer that the Subcontractor is not executing the work with sufficient diligence to ensure completion within the period of performance specified in the Subcontract. Upon making this determination, DAI/AVANSE may terminate the Subcontractor’s right to proceed with the work, or any separable part of it, in accordance with the default terms of this Subcontract.

## Acceptance of Schedule of Work

The Period of Performance is defined on the Cover Sheet of this subcontract agreement. The Subcontractor shall schedule the Work such that it will be fully and adequately completed within that period. When DAI has accepted the Subcontractor’s Schedule of Work, it shall be binding upon the Subcontractor. Any acceptance of Subcontractor’s Schedule by DAI simply means that the Schedule meets the minimum requirements of the Subcontract but does not imply DAI’s concurrence in the adequacy of the Schedule for any other purpose. The Period of Performance dates are fixed, and are not adjusted based on an updated Schedule of Work. The Period of Performance may only be extended by a written subcontract modification signed by the authorized Subcontracts Administrators. Acceptance or approval of any schedule or revision thereof by DAI shall not (1) extend the completion date or obligate DAI to do so, (2) constitute acceptance or approval of any delay, or (3) excuse the Subcontractor from or relieve the Subcontractor of its obligation to maintain the progress of the Work and achieve final completion by the established completion date.

## Notice of Delay

If the Subcontractor receives a notice of any change in the Work, or if any other conditions arise which are likely to cause or are actually causing delays which the Subcontractor believes may result in late completion of the Work, the Subcontractor shall notify the Chief of Party, Subcontracts Administrator, and Engineer. The Subcontractor’s notice shall state the effect, if any, of such change or other conditions upon the approved schedule, and shall state in what respects, if any, the relevant schedule or the completion date should be revised. The Subcontractor shall give this notice not more than five (5) days after the first event-giving rise to the delay or prospective delay.

## Working Hours

The working hours shall be determined by the Subcontractor but shall be both reasonable and in accordance with the laws of the Republic of Haiti. Any hours or days of overtime, weekend, or holiday work shall be an exclusive arrangement of the subcontractor and his or her work force without further obligation to DAI. The Subcontractor shall inform the Engineer or the Engineer’s Representative of the proposed working hours prior to the commencement of the Work.

## Excusable Delays

***FAR 52.249-10, Default***

The Subcontractor will be allowed time, not money, for excusable delays. Examples of such cases include:

* 1. Acts of God or of the public enemy,
  2. Acts of the client in either its sovereign or contractual capacity,
  3. Acts of Government of the host country in its sovereign capacity,
  4. Fires,
  5. Floods,
  6. Strikes,
  7. Epidemics,
  8. Quarantine restrictions,
  9. Freight embargoes, and
  10. Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor, and the failure to perform. Furthermore, the failure:

1. Must be one that the Subcontractor could not have reasonably anticipated and taken adequate measures to protect against,
2. Cannot be overcome by reasonable efforts to reschedule the Work, and
3. Directly and materially affects the date of final completion of the project.

The Subcontractor shall notify the Engineer, or Engineer’s Representative, in writing the reason for the delay at the time of the failure to perform. Pursuant to FAR 52.249-14, DAI/AVANSE may consider a time extension due to excusable delays. If the Engineer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of DAI/AVANSEs under the termination clause of this Subcontract.

# QUALITY CONTROL AND ACCEPTANCE

## Compliance with Design Standards

The Subcontractor, when/if carrying out design work, shall comply with accepted standards for materials, designs, and methods in the development of drawings and specifications. At a minimum, all design and work shall conform with those required the Republic of Haiti. Additional specific design standards applicable to this subcontract are stated in Contract Data, if any.

## Quality Assurance

The Subcontractor is responsible to prepare and submit a Quality Assurance Plan to DAI’s Engineer. This Plan shall describe in specific detail the systematic actions to be taken by the Subcontractor and its team with confidence that components and installations shall be purchased, designed, and constructed in accordance with applicable standards, specifications and drawings, as specified by subcontract. The schedule shall be submitted in accordance with the timeline outlined in Appendix F, Schedule of Deliverables. The Quality Assurance Plan will include:

* A Document Control Plan
* A Communications Plan
* A Material and Method Testing Plan
* A Reporting Plan
* Forms that shall be used every day and month for reporting QC to the Engineer for showing that Contract required documents and periodic actions are being carried out as directed.

The Contractor shall also name an on-site person as the Quality Control Manager/Officer whose responsibility it is to manage the QC Plan.

The Subcontractor shall institute an appropriate inspection plan set forth in a quality assurance plan. The plan shall include checklists of duties to be carried out, ensuring these duties are carried out by the supervisory staff and senior employees, and carrying out regular inspections to determine whether the various services are being performed according to the Subcontract. The Subcontractor shall photograph construction operations daily. The Subcontractor shall provide copies of the inspection reports and photographs to the Engineer, or Engineer’s Representative.

The Subcontractor shall correct and improve promptly any shortcomings and substandard conditions noted during inspections. The Subcontractor shall promptly bring any conditions beyond the responsibility of the Subcontractor to the attention of the DAI COP, Engineer, or Engineer’s Representative.

## Workmanship and Quality Control

The Subcontractor is expected to produce the Work which conforms in quality with its own Quality Assurance Plan, and conforms with accuracy to the details of the technical specifications, drawings, and standards, and at his or her own expense, is to institute a quality control system and provide experienced managers, engineers, foremen, surveyors, materials technicians and other technical staff, together with all transport, instruments and equipment, to ensure adequate supervision and execution of the Work at all times.

The Subcontractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Subcontract, unless the Drawings or Specifications give other specific instructions concerning these matters. If the Drawings or Specifications give specific instructions concerning construction means, methods, technique, sequences, or procedures, the Subcontractor shall evaluate and mitigate any health and safety implications of these instructions.

The Subcontractor shall ensure materials and workmanship meet the requirements described in the Scope of Work, drawings, and technical specifications and in accordance with the Engineer's, or the Engineer’s Representative, technical instructions, within the Scope of Work, and shall be subjected to such tests as the Engineer, or the Engineer’s Representative, may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places. The Subcontractor shall provide such assistance, instruments, machines, labor and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Work for testing as may be selected and required by the Engineer, or the Engineer’s Representative.

The cost of all supervision and process control, including testing, so carried out by the Subcontractor shall be deemed to be included in the subcontract.

Specific quality assurance test requirements are indicated in the Technical Specifications and the Subcontractor should ensure practical attendance and other compliance requirements directed by the Engineer, or Engineer’s Representative, in compliance with the Subcontractor’s own Quality Assurance Plan.

In accordance with FAR Clause 52.236-5 “Material and Workmanship” (APR 1984), all equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided for in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Engineer, is equal to that named in the specifications, unless otherwise specifically provided for in this Contract.

The Contractor shall perform all work under this Contract in a skillful and workmanlike manner. The Engineer reserves the right to request the removal of any Contractor employee who is deemed to be incompetent, careless, or otherwise objectionable.

## Submittals

Contractor shall within 15 days of subcontract signing submit for Engineer review and approval the following Submittals.

1. Mechanical Gate Fabrication Plan (dimension schedule (5), materials, welding specification, painting specification, plan to allow Engineer inspection in Port au Prince of completed gates prior to shipping);
2. Slide Gate Fabrication Plan (dimension schedule (57), material specification, shop drawings (2- one for a mechanical gate and one for slide gate) welding specification, painting specification, schedule-plan to allow Engineer inspection and approval of all completed gates in Port au Prince prior to shipping to Cap Haitien);
3. Cement;
4. Reinforcing Steel; and
5. Gabion Rock.

All submittals shall be made using a standard cover sheet provided by the Engineer to the Contractor. Submittals shall include as required:

1. Manufacturer’s Product Information (Make, Model #, Date of Manufacture, Use recommendations, transport and storage instructions, installation instructions, etc.) Contractor shall demonstrate to the Engineer’s satisfaction that such materials and/or equipment meet stated specification requirement;
2. Non-material Deliverables: Must meet the definition as defined in these specifications or other Contract Documents; and
3. Any work carried out with unapproved materials or under unapproved method statements or operational plans may be unacceptable and may require replacement at the expense of the Contractor;

## Inspection by the Engineer

The Engineer, or the Engineer’s Representative, will routinely inspect the services being performed and the supplies furnished to determine whether the Work is being performed in a satisfactory manner, and that all supplies are of acceptable quality and standards. The Subcontractor shall be responsible for any countermeasures or corrective action, within the scope of this subcontract, which may be required by the Engineer, as a result of such inspection.

## Testing

The Subcontractor shall mobilize the necessary field testing apparatus and equipment complete with standards and procedures for performing the required field test as required in the technical specifications and in the subcontractor’s own Quality Assurance Plan. Imported materials that cannot be tested on sites and are delivered to the site shall bear with them certifications of their suitability to be utilized (i.e. cement, reinforcing steel and etc.). The Engineer shall be furnished with copies of the certification from manufacturers of the classification, strength capacities etc. of these items. Supplied imported materials for which no testing equipment is available for verification shall bear with the supply, a certification from the manufacturer of the quality of the material. If the material does not pass the required standards of quality as described in the subcontract document, it shall be taken out of the site and not used for the Work.

Materials shall always be transported stored, tested and installed by the Subcontractor according to international trade technical rules and best professional practice. Supporting documents and certificates shall attest to the origin and quality of materials. Brand names, or proven equivalent, shall be submitted by the Contractor prior to delivery, attesting to the quality of materials for desired properties including strength, bulkiness, shape, appearance and overall quality of the material. All materials used in the Works shall generally comply with American Society for Testing and Materials (ASTM) or equivalent standards unless otherwise specified by DAI. Where proprietary products are specified, similar products from other manufacturers will be permitted only with the approval of the DAI Engineer. Tests to be carried out during construction

| **#** | **Type of Work** | **Test** | **Instruction** |
| --- | --- | --- | --- |
| 1 | All Civil Works | Sample field tests of water, sand, aggregates and stone | Contractor shall supply test reports before delivery of material to the site |
| 2 | Backfilling and Compaction | Density of compacted material | Manual test in presence of the Engineer’s Representative as requested. |
| 3 | Concrete Work | Quality of cement | Cement shall comply with ASTM C 150 (AASHTO M 85). |
| 4 | Concrete Work | Concrete Slump test | For each batch prepared, slump test shall comply with ASTM C 143. Two test standards and shall be within +25 mm or + one third of the required value whichever is less |
| 5 | Concrete Work | Compressive Strength Testing | Tests shall comply with ASTM. Two sample cubes shall be tested at 7 days at two 28 days for mixes and pours on the job site. |
| 6 | Masonry Work | Block/Stone | Stone masonry works shall include materials |
| 7 | Foundations for Civil Work | Soil density test | California Bearing Ration testing may be required by the Engineer |

## Inspection by the Funding Agency

The designated Funding Agency representative may conduct routine inspections of the work being performed to determine whether the Work is being performed in a satisfactory manner, and that all materials are of an acceptable quality. The Subcontractor agrees to cooperate fully with requests for inspection from the Engineer, or Engineer’s Representative, or the designated Funding Agency representative.

The Subcontractor shall neither seek nor accept direct instructions from the Funding Agency in connection with the performance of his or her services under this Subcontract, unless issued through an approved Change Order Modification to the subcontract agreement.

The Subcontractor shall be responsible for any countermeasures or corrective action, within the scope of this subcontract, which may be required by the COP or Engineer, as a result of such inspection.

## Inspection

The Subcontractor shall maintain and adhere to its Inspection Plan as outlined in its Quality Assurance/Quality Control Manual.

***52.246-12 Inspection of Construction (August 1996)***

The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the subcontract conforms to subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to DAI and/or the Funding Agency. All work shall be conducted under the general direction of the Chief of Party and is subject to DAI’s, representing the Funding Agency, inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

DAI, and or the Funding Agency, inspections and tests are for the sole benefit of DAI, and or the Funding Agency, and do not:

(1) Relieve the Subcontractor of responsibility for providing adequate quality control measures;

(2) Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of DAI, or the Funding Agency, after acceptance of the completed work under paragraph (i) of this section.

The presence or absence of a DAI inspector does not relieve the Subcontractor from any subcontract requirement, nor is the inspector authorized to change any term or condition of the specification without the authorized Subcontract Administrator’s written authorization.

The Subcontractor shall promptly furnish, at no increase in subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by DAI. DAI may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. DAI shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the subcontract. Subcontractor shall schedule all inspections with a reasonable amount of advance notice.

The Subcontractor shall, without charge, replace or correct work found by DAI not to conform to contract requirements, unless in the public interest the Owner consents to accept the work with an appropriate adjustment in contract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.

If the Subcontractor does not promptly replace or correct rejected work, DAI may:

(1) By subcontract or otherwise, replace or correct the work and charge the cost to the Subcontractor; or

(2) Terminate for default the Subcontractor’s right to proceed.

If, before acceptance of the entire work, DAI decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its subcontractors, the Subcontractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet subcontract requirements, the Subcontracts Administrator shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

## Inspection and Acceptance

DAI’s inspection and acceptance of services, reports and other required deliverables or outputs shall be delivered to DAI’s Address as stated in the Contract Data or at any other location where the services are performed and reports and deliverables or outputs are produced or submitted. The Engineer, or Engineer’s Representative, have been delegated authority to inspect and accept all services, reports and required deliverables or outputs.

## Site Possession

While the site is within the possession of the Subcontractor, the Subcontractor shall be fully responsible for all security of materials and equipment on site, including those that were present at the time of Site Possession, belonging to, or in the care of, DAI or the Funding Agency, Owner, or others.

The Subcontractor shall be responsible to replace or repair any damage, loss, theft, or abuse of the site while the site is in its possession.

## Requests for Information or Clarification

The Subcontractor shall submit to the Engineer, or the Engineer’s Representative, written Requests for Information or Clarification when there is need to confirm the interpretation of a standard, specification, instruction, or note on the construction drawings or to secure a documented directive or clarification from DAI, the designer, Funding Agency, or Owner, that is needed to continue work.

In some cases, a Request for Information or Clarification raised by the Subcontractor that has been answered by DAI and distributed to all stakeholders may be accepted as a change to the scope of work unless further approval is required for price or time extensions associated with the change, which shall be further requested by the Subcontractor through a Request for Potential Change Order.

The Engineer, or the Engineer’s Representative, shall respond in a timely fashion to the Subcontractor.

## Environmental Quality Assurance

The Subcontractor shall adhere to all environmental compliance and mitigation requirements outlined by DAI or provided in the DAI approved Programmatic Environmental Assessment (PEA) or Environmental Management and Monitoring Plan (EMMP) prior to award of this subcontract, and those determined necessary during the period of performance.

The Subcontractor shall also comply with any and all applicable specifications, standards, or national Republic of Haiti or local environmental regulations. The Subcontractor shall be responsible for any fines, fees, or penalties associated with failing to comply with environmental laws and regulations. and the Government of Haiti Laws on Protection of Environment and other relevant legislation. The Contractor shall comply with all current environmental laws and regulations, be they national or local, related to the following, but not limited to:

1. Noise;
2. Vibration;
3. Air pollution;
4. Water contamination;
5. Solid waste disposal;
6. Liquid waste disposal;
7. Sanitary conditions;
8. Avoidance of Nuisance

The Contractor shall also:

1. At all times ensure that all existing stream courses and drains within, and adjacent to, the site are kept safe and free from any debris and any excavated materials arising from the Works;
2. Ensure that chemicals and concrete agitator washings are not deposited in the watercourses;
3. Ensure that all water and waste products arising on the Site shall be collected, removed from the site via a suitable and properly designed temporary drainage system and disposed of at a location and in a manner that will cause neither pollution nor nuisance;
4. Provide adequate precautions to ensure that no spoil or debris of any kind are allowed to be pushed, washed down, fallen or be deposited on land adjacent to the Site;
5. Provide adequate precautions to ensure that no undue noise or vibrations are allowed to be distributed to land adjacent to the Site;
6. Not burn debris or other materials on the site without the permission of the Engineer;
7. Implement when required by the Engineer dust suppression measures that shall include but not be limited to effective water spraying to dampen dust during the delivery and handling of all raw sand and aggregate and other similar materials when dust is likely to be created during dry and windy weather.

## Differing Site Conditions

***(Differing Site Conditions, FAR 52.236-2 Apr 1984)***

The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice as per Section 5.5 of this subcontract agreement, to DAI of:

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

The Project Site Rehabilitation Engineer or Engineer’s Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor’s cost of, or the time required for, performing any part of the work under this subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the subcontract modified in writing accordingly.

No request by the Subcontractor for an equitable adjustment to the subcontract under this clause shall be allowed, unless DAI has given the written notice required; provided, that the time prescribed for giving written notice may be extended by DAI.

No request by the Subcontractor for an equitable adjustment to the subcontract for differing site conditions shall be allowed if made after final payment under this subcontract.

The Contractor may furnish surveys or studies describing physical characteristics, legal limitations, or utility locations for the site. The Subcontractor shall be entitled to rely on the accuracy of the information contained in the surveys or studies, but shall exercise proper precautions related to the safe and compliance performance of the Work in accordance with the Drawings and Specifications.

If, in the course of the Work, the Subcontractor encounters human remains or recognizes the existence of burial markers, archaeological sites, wetlands or other protected resources not indicated in the Drawings, the Subcontractor shall immediately suspend any operations that would affect them and notify the Contractor, who shall work with government authorities to resume operations. The Subcontractor shall continue with all other operations that do not affect those remains or features.

## Examination of Work Before Covering Up

No work shall be covered up or put out of view with prior approval from Engineer, or Engineer’s Representative. The Subcontractor shall afford full opportunity of the Engineer, or Engineer’s Representative, to examine and measure any work which is about to be covered up, or put out of view, before permanent work is placed thereupon. The subcontractor shall give due notice to the Engineer, whenever any such work is ready, or about to be ready, for examination. The Engineer shall, without unreasonable delay unless he or she considers it unnecessary and advises the Subcontractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

If a portion of the Work is covered up, contrary to the DAI Engineer’s request for the Specifications, the Subcontractor must, if requested in writing, uncover the Work for the Engineer’s inspection and be replaced at the Subcontractor’s own cost, without any request or Claim for an adjustment to the Period of Performance.

## Removal of Improper work or materials

The Chief of Party, Engineer, or Engineer’s Representative shall have the authority to issue instructions as necessary for:

1. The removal from the site, within such time or times as may be specified in the instruction, of any materials or work, that are not in accordance with the Subcontract;
2. The substitution of proper and suitable materials and work; and
3. The proper re-execution of any work or materials not in accordance with the Subcontract.

Any costs associated with these instructions, shall be borne at the sole expense of the Subcontractor.

## Remedial Work

When any part of the Work or any equipment or material is found, upon examination by the Engineer, not to conform to requirements, or is at any stage before Final Completion and Acceptance, is damaged, so that it no longer conforms to requirements, the Project Site Renovation Engineer may order its repair or complete removal and replacement, at the Subcontractor’s expense.

## Substantial Completion

"Substantial Completion" means the stage in the progress of the Work as determined and certified by the Project Engineer and the DAI COP, on which the Work (or a portion designated by DAI) is sufficiently complete and satisfactory. Substantial completion means that the Work may be used for the purpose for which it is intended, and only minor items remain to be completed or corrected which:

1. Do not interfere with the intended utilization of the Work, and
2. Can be completed or corrected within the time period required for final completion.

A Substantial Completion inspection shall be held between DAI and Subcontractor, and when possible the Owner, to jointly inspect the Work and to determine whether all equipment, materials, and installation are complete, fully operational, and functioning.

Any equipment, installation, or system that is not fully functioning and operational means that Substantial Completion is not realized.

The "date of substantial completion" means the date determined by the Engineer or COP of which substantial completion of the Work has been achieved. When possible, the “date of substantial completion” shall be confirmed, and signed, by the Owner, through representative attendance at the Substantial Completion Inspection.

All system tests and commissioning must be complete before the Substantial Completion Inspection, and reports from any testing or commissioning inspectors or authorities must be available for the Substantial Completion inspection. Testing of systems shall be based on Technical Specifications.

A Punch List shall be generated at the Substantial Completion inspection, and shall include a list of all incomplete, defective, damaged, or not functioning materials, installation or equipment.

The Subcontractor may request partial demobilization from the site upon Substantial Completion.

Any accrual of liquidated damages shall cease upon Substantial Completion.

The Subcontractor shall submit to DAI, and thus the Owner, any Operations and Maintenance Manuals, materials, or training required under this subcontract agreement upon Substantial Completion.

## Punch List

When any part of the Work or any equipment, material, or installation is found, upon examination by the Project Engineer during the Substantial Completion Inspection, not to conform to requirements it shall be recorded on a Punch List. This punch list shall only include materials or installations that do not interfere with the intended use or operation by the Owner.

The Subcontractor shall complete all Punch List items within thirty (30) days of the Substantial Completion Date, and notify the Project Engineer, within thirty (30) days of the Substantial Completion Date, when the Punch List inspection can occur.

Upon completion of all Punch list Items, the Subcontractor shall request, in writing, a Final Completion Inspection, however, the Subcontractor remains responsible for any of its own materials, equipment, or personnel on site and shall provide adequate security and protection for these items until fully demobilized.

The Subcontractor remains responsible for the continuing security of its own assets, labor, and safety and security during the time it takes to complete the Punch List.

Failure to include an item on the Punch List does not alter the responsibility of the Subcontractor to complete all Work in accordance with the subcontract agreement, technical specifications, and drawings.

## Final Completion and Acceptance

"Final Completion and Acceptance" means the stage in the progress of the Work as determined by the Project Engineer and COP, and confirmed in writing to the Subcontractor, at which all the Work required under the subcontract has been completed in a satisfactory manner, subject to the discovery of defects after final completion, and except for items specifically excluded in the Certificate of Final Acceptance.

The "date of Final Completion and Acceptance" means the date determined by the DAI Engineer and COP when final completion of the Work has been achieved, as indicated by written notice to the Subcontractor.

Final Completion and Acceptance shall be determined through a joint inspection of all of the materials, equipment, and installation.

When possible, the Certificate of Final Completion and Acceptance shall be confirmed by the Owner, through representative attendance at the Final Completion Inspection.

The Subcontractor may request demobilization from the site upon Final Completion. Site Possession ceases upon the date of Final Completion, however, the Subcontractor remains responsible for any of its own materials, equipment, or personnel on site and shall provide adequate security and protection for these items until fully demobilized.

## Certificate of Final Completion and Acceptance

When the COP, via the DAI Engineer, or Engineer’s Representative, are satisfied that the Work under the subcontract is complete (with the exception of continuing obligations as specifically excluded), the COP shall issue to the Subcontractor a Certificate of Final Acceptance and make final payment, minus retention, upon:

1. Satisfactory completion of all required tests,
2. A final inspection that all items listed in the Punch List have been completed or corrected and that the Work is finally complete (subject to the discovery of defects after final completion),
3. Formal hand over of the Work to the Owner, and
4. Submittal by the Subcontractor of all documents and other items required upon completion of the Work, including a final request for payment (Request for Final Acceptance).

## Handover

The Contractor shall upon receiving a Certificate of Final Completion and Acceptance, provide DAI with a letter that meets the legal requirements of the Republic of Haiti and supporting documentation handing over the completed work to DAI. DAI will review and sign such letter thereby effecting a transfer of ownership of the Works to DAI. DAI will then transfer the ownership of the Works to USAID/Haiti who will transfer ownership of the completed Works to the Republic of Haiti and/or the Water Users Association.

## Defects and Liabilities

The Defects and Liabilities period is intended to cover any defects that may be found to exist in the complete Work, including but not limited to latent defects, and is a period during which the Subcontractor is expected to maintain, repair, and remedy defects discovered after Substantial Completion.

The Subcontractor is not responsible to repair or replace items which can be proven to have been damaged by improper use, lost, or stolen by the infrastructure users, visitors, building occupants or maintenance staff, during the Defects and Liability Period.

During the Defects and Liabilities Period, the Subcontractor is responsible to respond to all requests by the Contactor, Funding Agency, or Owner to repair or replace latent defects discovered during use and operations.

Only upon the completion, repair or replacement of all latent defects shall one hundred percent (100%) of the Retention Money, less any liquidated damages or penalties, be certified by the DAI COP, via DAI Engineer, or Engineer’s Representative, for payment to the Subcontractor.

# REPORTS, MEETINGS, and DELIVERABLES

## Deliverables

A full schedule of deliverables required under this subcontract agreement is provided in Appendix F, Schedule of Deliverables.

## Preconstruction Conference

The Engineer shall convene a Pre-Construction Conference within five (5) days of contract signing and DAI project and procurement staff, Contractor and Engineer representatives shall attend. Agreements reached in this meeting shall be the basis for all project construction activities and act as precedent for expectations by each party. In this meeting, the Contract Parties shall solve concerns, establish a project partnership, and set the tone for the project communications and partnership for the whole project. The agenda, time, and place for this meeting will be set by the Engineer and provided to the Contractor shortly after Contract signing.

## Site Meetings

Site Meetings shall be attended by the Subcontractor, the Engineer, and/or the Engineer’s Representative, and shall be held throughout the Period of Performance of the Subcontract at a frequency determined by agreement between the Engineer and DAI, and as stated in Appendix F. The Engineer, or the Engineer’s Representative, will chair the Meetings and keep the minutes, copies of which shall be provided to each party within a timely manner. The following shall be presented by the subcontractor at each meeting, at a minimum:

1. Site Inspection and site walk through
2. Presentation of work progress
3. Procurement update, as applicable
4. Labor and equipment schedules
5. Review status of submittals: requests for information, variances, alternatives and substitutions
6. Upcoming activities planned by the Subcontractor that may require testing

## Health and Safety of Persons and Property

The Subcontractor is responsible to prepare and submit a Health and Safety Plan to DAI, in accordance with the timeline outlined in Appendix F, Schedule of Deliverables. This Plan shall describe in specific detail the systematic actions to be taken by the Subcontractor and its team with confidence that there shall be continuous and adequate provisions for the management of health, safety, and security at the Site. The Health and Safety Plan shall include, at a minimum:

1. Acknowledgement and acceptance of the responsibility to manage health and safety of workers, visitors, and all equipment, and materials on site.
2. Designation of responsibilities on the construction site and contact numbers.
3. Training and education requirements – both routine and in response to an incident.
4. Incident procedures and reporting.
5. Emergency medical, fire and ambulance contact information and directions.
6. Compliance with any health and safety regulations and standards required by the host-country or DAI.
7. Communication protocols for notifying and/or sending a copy of all incident reports to the Project Engineer as soon as an incident occurs.

## Monthly Progress Reports

The Subcontractor shall submit monthly Progress Reports, which provide a written status of progress, problems, or updates to the Engineer and the COP. These monthly reports shall be submitted via email to the Engineer and DAI five days before the regular monthly meeting. The Progress Report shall at a minimum include the following elements:

1. Comparison (bar chart) of work progress against the approved Schedule;
2. Notification of delays;
3. Labor and equipment schedules, usage, or problems or concerns;
4. Field observations, problems and conflicts ;
5. Quality Assurance Plan Compliance: Status of all testing and all quality control issues as well as the results of daily meetings and inspections;
6. Health & Safety Plan Compliance: Status of H&S Plan compliance, summary of Safety issues; and
7. Environmental Management and Monitoring Plan Activities and Compliance: Status of EMMP activities, issues and compliance.
8. Social impact issues, workforce concerns, or expectations;
9. List of submittals and correspondences provided during the period, and their corresponding status;
10. Photographs of work progress, installation, and activities on Site during the period

## Final Report

The Subcontractor shall submit to the Engineer, or Engineer’s Representative, a Final Report including bar charts of progress and selected photos along with the final invoice, summing up observations resulting from the inspections, progress, difficulties or irregularities encountered, resolution of problems, measures taken to improve conditions, recommendations, and other matters related to this subcontract.

## Environmental Impact Assessment and Reports

An environmental impact assessment report may be requested that meets the Funding Agency requirements. When requested by DAI, the Subcontractor shall assist DAI as requested in completion of this assessment, and any subsequent environmental reports required to monitor compliance.

# CONTRACTUAL AND TECHNICAL DIRECTION

## Subcontract Administration

For purposes of this Subcontract Agreement, only the authorized individuals designated as the Subcontractor’s administrators are authorized to bind DAI and Subcontractor contractually. A list of those authorized is found in the Contract Data.

For the subcontractor, only the signatory of the subcontract agreement is authorized to bind the subcontractor contractually.

## Technical Direction

The Chief of Party (COP) is responsible for the overall management and technical direction of all DAI activities in The Republic of Haiti; including this activity. The COP’s representative, the “Engineer,” shall be as specified in the Contract Data.

The Engineer may delegate technical duties and authorities vested in the Engineer to the Engineer’s Representative, such as a Site Inspector, and may from time to time revoke such delegation. Such delegation and revocation shall be in writing and copied to DAI and Subcontractor in this Subcontract. Such information shall only take effect after receipt by DAI or Subcontractor.

The COP, and his or her designated representatives, including the Project Engineer, reserves the right to attend any/all meetings, participate in site visits, provide management or technical direction through the Engineer, or Engineer’s Representative, and take any other action deemed necessary to manage the performance of the subcontractor.

The Engineer is responsible for providing day-to-day supervision, technical direction, record keeping, performance documentation, and reporting. The Engineer shall carry out all duties specified by the Subcontract.

The term “technical direction” is defined to comprise:

1. Supervising the Subcontractor, technically administering the subcontract, certifying measurements, deliverables, and payments to the subcontractor, reviewing Change Order Requests, interpreting the subcontract appendices, recommending extensions of time, rejecting or accepting materials used, reviewing all deliverables under the subcontract and other duties as may be assigned from time to time by DAI.
2. Provision of written directions, within the Scope of the Subcontract, to facilitate completion of the Work;
3. Provision of written information to the Subcontractor which assists in the interpretation of drawings, specifications, or technical portions of the Statement of Work by responding in a timely manner to Requests for Clarification or Information.
4. Review and, where required, provide written approval of technical reports, drawings, specifications, or technical information to be delivered. Technical directions must be in writing, and must be within the Scope of the Work.
5. The Engineer, or Engineer’s Representative, shall at all times have access to the Work during any stage of the execution or preparation or completion.
6. The Engineer shall represent DAI during the whole of the period of constructions under this Subcontractor. The Engineer shall advise, report, and consult with DAI on all matters relating to this Subcontract. DAI’s instructions or any correspondence of any form to the Subcontractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of DAI only to the extent provided in the Subcontract Documents as they may be amended in writing in accordance with the Subcontract.
7. Keep DAI informed of the progress of the Work, based on on-site inspections.
8. Certify, verify, and measure Work completed based on photographs, site inspections, or testing results.
9. Authorized by designation to take any or all action with respect to the following, except any action specifically prohibited by the terms of this Subcontract:
10. Assure that the Subcontractor performs the technical requirements of the subcontract in accordance with the subcontract terms, conditions, and specifications.
11. Perform or cause to be performed, inspections necessary in connection with 1) above and require the Subcontractor to correct all deficiencies; perform acceptance for DAI.
12. Maintain day-to-day liaison and direct communications with the Subcontractor. Written communications with the Subcontractor and documents shall be entitled "**As per Contract Data,**" with a copy furnished to the COP.
13. Monitor the Subcontractor's production or performance progress and notify the Subcontractor in writing of deficiencies observed during surveillance, and direct appropriate action to effect correction. Record and report to the COP and authorized Subcontracts Administrators as incidents of gross faulty or nonconforming work, health or safety violations, delays or problems.

LIMITATIONS:

1. Neither the Engineer nor Engineer’s Representative is authorized to approve subcontract modifications, including change orders that would increase the subcontract price or change the period of performance. These changes require the approval of the Engineer, the Chief of Party, and shall be signed by an authorized Subcontracts Administrator of the Contractor.
2. Neither the Engineer nor Engineer’s Representative is empowered to award, agree to, or sign any subcontract (including delivery or purchase orders) or modifications thereto, or in any way to obligate the payment of money by DAI. Neither the Engineer, nor Engineer’s Representative, may take any action which may impact on the subcontract schedule, funds, or scope without the written approval of the COP.

Neither the Engineer nor Engineer’s Representative shall be held liable for, nor will they have control of, construction process, techniques, procedures, safety precautions and schedules relating to the all forms of Work. Nor shall the Engineer, or Engineer’s Representative, be responsible for or be in control or charge of acts or omissions of the Subcontractor.

The Engineer, or Engineer’s Representative, shall not be liable or responsible for any of the Subcontractor’s mistakes or the Subcontractor’s failure to perform the Work in accordance with the subcontract documents except where such performance of the Subcontractor is due to the Engineer, or Engineer’s Representative’s failure to perform his/her functions in accordance with the agreement between the Engineer, or Engineer’s Representative, and DAI.

The Engineer, or Engineer’s Representative, is required to meet with the Subcontractor, at intervals outlined in Appendix F, Schedule of Deliverables, concerning performance of items delivered under this subcontract and any other administration or technical issues. The venue and time of meeting shall be arranged by the Engineer, and shall involve all relevant stakeholders of the Project. Telephonic reports may be made if no problems are being experienced.

In the absence of the designated Engineer or Engineer’s Representative, the COP will designate appropriate someone to serve as Engineer in their place.

Contact information for the Engineer, and Engineer’s Representative, shall be provided by the COP in the Notice to Proceed.

## Communications with the Funding Agency

All of the Subcontractor’s contractual written or oral communications with or to the Funding Agency, or local agencies relative to the Work under the subcontract, must be through or with the prior written authorization of COP. Direction given by the Funding Agency or local agencies relative to the work under the subcontract shall not be effective unless and until confirmed in writing by the COP.

## Subcontracting

In the event the Subcontractor requires the services of subcontractors other than any approved nominated 2nd-tier subcontractors, the Subcontractor shall obtain prior written approval the Contracts Administrator, for all such subcontracts which are in excess of 20% of the total Subcontract Price. The approval by DAI shall not relieve the Subcontractor of any of his/her obligations under this Subcontract agreement, and the terms of any subcontract shall be subject to, and be in conformity with, the provisions of this Subcontract.

All clauses, terms and conditions of this subcontract agreement must be flowed down to the 2nd-tier subcontractors, and all 2nd-tier subcontractors shall equally abide by the same terms and conditions of this subcontract agreement between DAI and the Subcontractor.

DAI has a right to request written evidence from the Subcontractor that the Subcontractor has properly paid its 2nd-tier subcontractors and material and equipment suppliers. If the Subcontractor fails to furnish such evidence within seven days, DAI shall have the right to contact 2nd tier subcontractors directly to ascertain whether they have been properly paid. DAI retains the right to notify any surety that has provided a Payment Bond (as covered in Section 11) if DAI confirms that 2nd tier subcontractors or material and equipment suppliers have not been properly paid. Neither DAI, the Funding Agency, nor the Owner shall have an obligation to pay or to see the payment of money to a 2nd-tier subcontractor, except as otherwise required by law.

# SUBCONTRACTOR’S GENERAL OBLIGATIONS

## Subcontractor’s General Responsibilities

The Subcontractor shall, with due care and diligence, design (to the extent provided for by the Subcontract), execute and complete the Work and remedy any defects therein in accordance with the provisions of the Subcontract. The Subcontractor shall provide all superintendence, labor, materials, plant, Subcontractor's equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Subcontract.

The Subcontractor shall confine operations at the Site to areas permitted by applicable law, statutes, ordinances, codes, rules or regulations, and lawful orders of public authorities, and shall not unreasonably encumber the Site with materials or equipment. The Subcontractor shall not conduct any business of its own on the Site which does not directly relate the performance of this subcontract agreement.

## Site Operations and Methods of Construction

The Subcontractor shall take full responsibility for the adequacy, stability and safety of all Site operations and means and methods of construction. Where the Subcontract expressly provides that part of the Work shall be designed by the Subcontractor, it shall be fully responsible for that part of such Work, notwithstanding any approval by the Engineer, or Engineer’s Representative.

## Site Security and Lighting

The Subcontractor shall take full responsibility for his or her own security of his or her own tools, materials, supplies, and equipment on site, and maintain, at his or her own cost, all lights, guards, fencing, and locks.

## Extraordinary Traffic and Special Loads

The Subcontractor shall use every reasonable means to prevent any of the roads or bridges connecting with or en route to the site, from being damaged by any traffic of the Subcontractor. The Subcontractor shall select routes, choose and use appropriate and safe vehicles, and restrict and distribute loads so that any such extraordinary traffic will be limited as far as reasonably possible and so that no unnecessary damage may occur to such roads and bridges.

## Opportunities for other Subcontractors

The Subcontractor shall in accordance with the requirements of DAI and the Engineer, or Engineer’s Representative, afford all reasonable opportunities for carrying out work by other Subcontractors employed by DAI, their workforce, DAI employees, and any other duly constituted authorities who may be employed in the execution on or near the worksite. Subcontractor shall be responsible for coordination of its workforce, labor, materials and equipment with all other labor on site, whether employed by Subcontractor or not.

## Employment of Local Residents, Women, Employment Data

The Contractor shall endeavor to identify and hire as many residents of the project area as possible so to offer part time skilled and unskilled jobs to local men and women in the villages and communities to be served by this project. The Contractor agrees that it shall hire women at a minimum of 25% of all unskilled labor and 10% all skilled labor. Further, the Contractor shall do its best to ensure the safety and dignity of all female labor in accord with the laws and regulations of the Republic of Haiti. Each month the Contractor shall provide the Engineer at the Monthly Meeting a breakdown of all Contractor employees on site on a format provided to the Contractor by the Engineer. Further, the Contractor shall attempt to engage local north Haiti Subcontractors when it is beneficial to the works and the Contractor. The subject of this clause shall be discussed at each monthly meeting.

## Project Signage and Branding

In accordance with USAID ADS 302 and USAID Branding Policy and Guidelines, the Contractor shall provide two project construction sign boards that are a minimum 3 m x 1.5 m painted plywood or professionally fabricated and painted steel on free-standing supports that provide the public with project information and include required advertisement of the Government of Haiti MARNDR and USAID as implementing and funding agencies. These signs will be posted in a location to be approved by the Engineer and shall be professionally fabricated. They shall also be well maintained during the life of the project or even replaced at the expense of the Contractor if they fade or are damaged by the sun and/or weather events. The Engineer will provide the exact template for said signs at the pre-construction conference.

The contractor shall also provide permanent marking of the completed construction as directed by the Engineer again that provides branded notice that the completed structures are the result of international cooperation on the AVANSE project and identify MARNDR and USAID/Haiti. The exact template for such branding shall be provided by the Engineer and it shall consist of a professionally produced metal plate permanently affixed to both intake structures

## Antiquities

Subject to the provisions defined in the applicable laws and regulations of Haiti, Contractor shall immediately notify the Engineer of such findings of fossils, coins, antiquities, historic structures, and other vestiges of geological or archeological interest discovered on site. The Engineer shall then consult with the appropriate authorities, and advise the Contractor of the proper course of action. The Contractor shall take reasonable precautions to prevent its workmen or any other persons from removing or damaging any such article or artifact.

## Site Clean-up

Subcontractors must maintain a clean work site, by disposing of all debris and leftover material which were used for the work. All debris will be disposed of in an approved and certified dump site authorized by DAI, via the Engineer, Engineer’s Representative, or Environmental Officer. The Subcontractor is responsible to keep the work site free from all obstruction and shall store or dispose any construction plant and surplus materials, and clear away/remove from site any wreckage, rubbish or temporary Work no longer required. The Subcontractor shall properly dispose any debris arising from installation.

The subcontractor is responsible to bear all costs associated with the provision of the necessary health and safety equipment and methods for clean-up, proper removal and disposal of materials on site.

## Hazardous Materials

In the event of the discovery of the presence of hazardous or environmentally dangerous materials, the Subcontractor shall immediately notify the Engineer prior to removing or otherwise disturbing the material in question, and shall immediately stop Work in the affected area. In accordance with applicable specifications, standards, or national or local health or environmental regulations, the Subcontractor shall provide the workers with mandated, and/or, appropriate health and safety material and equipment. Hazardous and dangerous materials shall be stored and disposed of in compliance with the technical specifications, standard, or national or local regulations and laws.

When the hazardous material has been rendered harmless, as certified by an appropriate authority, the Work in the affected area shall resume upon written direction by DAI. The Subcontractor may submit a request for an extension in the Period of Performance based on the Work stopped in this area. This request for an extension of the Period of Performance must show evidence that the entire Work was delayed due to the affected area, and the overall work schedule, i.e. sequence of work, could not be adjusted within the Period of Performance.

## Assignment

The Subcontractor shall not further subcontract or assign any services or the Work to be performed under this Subcontract without prior written authorization from the Subcontracts Administrator.

## Taxes due by Subcontractor

The Subcontractor shall be responsible for the payment of all charges and taxes, with respect to income tax, value added tax, import and custom taxes, in accordance with the Income Tax Laws and regulations in force, and all amendments thereto, with the exception of those taxes exempt through a waiver granted on the basis of the Bilateral Agreement between the United States and the Government of the Republic of Haiti (FAR 52.229-6, Taxes – Foreign Fixed Price Contracts). It is the Subcontractor’s responsibility to make all the necessary inquiries in this respect and he or she shall be deemed to have satisfied him or herself regarding the application of all relevant tax laws.

## Employees of the Subcontractor

The Subcontractor shall be subject to and operate under all applicable Haitian Labor laws regarding employers’ liability, worker’s compensation, and unemployment compensation insurance. The Subcontractor expressly agrees that it is an independent contractor and its employees engaged in the Work are not and shall not be treated or considered employees of DAI. The Subcontractor shall be responsible for verifying the education and work experience of any key personnel, or representative (“Personnel”) assigned to perform the Work under the Subcontract and shall provide DAI with written proof of such verification.

All employees of the Subcontractor shall comply with the Government of Haiti laws and regulations in force in regards to the import, sale, use, barter, consumption or disposal of alcoholic drinks, narcotics, weapons, and arms. The Subcontractor shall ensure that all employees have due regard to all holiday, recognized festivals, religious, and or other customs. The Subcontractor shall, at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by, or amongst, his or her employees and for the preservation of peace and the protection of persons and property onsite or within the communities at large.

DAI reserves the right to disapprove the assignment of or request the removal of any Personnel assigned to perform the Work hereunder. DAI shall notify the Subcontractor, in writing, of the disapproved assignment or requested removal. The Subcontractor shall propose a qualified replacement for DAI’s approval, and the Funding Agency if required, within ten (10) working days of receipt of such notice.

## Key Personnel

The Subcontractor shall furnish the Key Personnel outlined in the Contract Data for performance under this Subcontract. The Subcontractor shall employ the key personnel proposed at the time of tender, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.

Personnel identified as “Key Personnel” are considered to be essential to the Work being performed.

The Subcontractor must submit CVs for all of the Key Personnel, and DAI may request an interview of proposed Key Personnel.

Prior to substituting or replacing the individual(s) or diverting any portion of the specified individual’s time to other programs, the Subcontractor shall notify the Subcontract Administrator, via the Engineer, reasonably in advance, or as soon as possible thereafter, and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion, substitution, or replacement shall be made by the Subcontractor without the prior written consent of the Engineer.

## Key Equipment

The Subcontractor shall furnish the Key Equipment outlined in the Contract Data for performance under this Subcontract, if any. The Subcontractor shall ensure the Key Equipment is available at the necessary times, in accordance with the approved schedule, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.

Equipment identified as “Key Equipment” are considered to be essential to the Work being performed.

No diversion, substitution, or replacement for Key Equipment shall be made by the Subcontractor without the prior written consent of the Engineer.

## Removal of Subcontractor’s Employees

DAI shall have the right, at any time, to request removal of any Personnel provided by the Subcontractor whom DAI and/or the Funding Agency reasonably deems, in consultation with the Subcontractor, to be unsatisfactory. Upon such request, the Subcontractor shall use all reasonable efforts to promptly replace such removed personnel with substitute Subcontractor Personnel having the skills and training suitable to provide the services required of the Subcontractor under this subcontract.

The Subcontractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Subcontract.

If any of the personnel is discharged by the Subcontractor for misconduct or inexcusable nonperformance, travel and transportation costs associated with the repatriation of such personnel and the assignment of replacement personnel shall not be an allowable cost under the Subcontract.

## Source of Instructions

The Subcontractor shall neither seek nor accept instructions from any authority external to DAI, the Engineer, or their authorized representatives in connection with the performance of his or her services under this Subcontract. The Subcontractor shall refrain from any action which may adversely affect DAI and shall fulfill his or her commitments with fullest regard for the interest of DAI.

## Safety and Security

In accordance with FAR Clause 52.236-13 “Accident Prevention” (NOV 1991), the Contractor shall provide and maintain work environments and procedures that will (1) safeguard the public, as well as Contractor’s personnel, property, materials, supplies, and equipment exposed to Contractor’s operations and activities; (2) avoid interruptions in Engineer and Employer operations, and avoid delays in project completion dates; and, (3) control costs in the performance of this Contract.

Contractor shall provide appropriate safety barricades, signs, and signal lights; and comply with all local safety standards, laws, regulations, codes, as are applicable in the performance of work as required under this Contract.

The Contractor shall provide the Engineer with the Contractor’s Project Health & Safety Plan five (5) days prior to the Pre-Construction Meeting and no later than 15 days after Contract Execution. The Contractor and the Engineer shall agree upon the terms and conditions of the Contractor’s H&S Plan at the Pre-Construction Conference. Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labor and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, trained Contractor staff, first aid equipment and stores are available at the camps, housing, and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of sickness and for all necessary welfare and hygiene requirements. The Contractor shall have an evacuation plan for inured personnel in place to ensure that they are taken to the nearest hospital or clinic as needed on an emergency basis if need be.

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.

DAI/AVANSE has stated that this project and the project site and all the Works shall be managed by the Engineer and the Contractor to be a no tolerance for H&S Plan violation area. Failure by the Contractor, the Contractor’s managers and supervisors, skilled and/or unskilled laborers to follow the H&S Plan shall be grounds for Contract suspension. The Contractor shall pay particular attention not only to their own staff but to the public and to guest health & safety.

The Subcontractor agrees to cooperate with and adhere to requests from DAI’s Security Manager and other DAI hired security staff in regard to the security of DAI’s project personnel.

## Permits

Except as otherwise directed by DAI, the Subcontractor has or will have, prior to commencement of any Work, and shall submit, all necessary business and professional licenses, permits, and other licenses as may be required by the Government of the Republic of Haiti to enable the Subcontractor to perform the services required hereunder.

## Protection of Existing Vegetation, Structures, Equip., Utilities, Improvements

In accordance with FAR Clause 52.236-9 “Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements” (APR 1984), the Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and that do not unreasonably interfere with the work required under this Contract.

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

## Operations and Storage (Lay Down) Areas

In accordance with FAR Clause 52.236-10 “Operations and Storage Areas” (APR 1984), temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Engineer and shall be built with labor and materials furnished by the Contractor without expense to thee Employer. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its own expense upon completion of the work.

The Contractor shall use only established roadways and bridges, or use temporary roadways. When materials are transported in executing the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or applicable laws. When it is necessary to cross curbs or sidewalks, the Contractor shall protect the property from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, bridges, and roads.

The planning and construction of all temporary roadways, paths and/or other transportation facilities required to carry out the work will be the responsibility of the Contractor to plan, organize and construct including all such costs for this work. This includes obtaining permissions for any land owner and/or the Water User’s Association. Prior to constructing any such facility or using any such area, the Contractor shall also obtain Engineer’s approval as well.

## The Use of Utilities

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services it may require. If available and as described in the Specifications, the Contractor shall be entitled to use, for the purposes of the Work, such supplies of electricity, water, gas and other services as may be available on the Site and as only as allowed and approved by the Engineer. The Contractor shall, at its risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed. The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer. The Contractor shall pay these amounts to whoever or whatever agency so negotiated such services, but DAI/AVANSE shall be kept informed and copied on any relevant correspondence.

## Right of Way / Easements

The Subcontractor shall bear all costs and charges for special and/or temporary rights- of-way or such property easements, which it may require, including those for access to the Site. The Subcontractor shall also obtain, at its risk and cost, any additional facilities outside the Site that it may require for the purposes of the Contract Work (“Work”).

The Subcontractor shall not interfere unnecessarily or improperly with:

1. The convenience of the public, or
2. The access to and use and occupation of all canals, fields, roads and footpaths, irrespective of whether they are public or in the possession of DAI/AVANSE or of others.

## Layout of Work

In accordance with FAR Clause 52.236-17 “Layout of Work” (APR 1984), the Subcontractor shall lay out its work from Employer established baselines and benchmarks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Subcontractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Subcontractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Engineer. The Subcontractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Engineer until authorized to remove them. If such marks are destroyed by the Subcontractor or through its negligence before their removal is authorized by the Engineer, the Subcontractor will replace them and deduct the expense of the replacement from any amounts due or to become due to the Subcontractor.

## Publicity and News Release

No publicity or news releases shall be made to the news media or the general public relating to participation on the Program without the prior written approval of Chief of Party, which approval shall not be unreasonably withheld. The parties further agree that news releases made by either of them shall recognize the participation and contribution of the other party.

## Publications

The Subcontractor shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of the Chief of Party.

## Audit and Records

The Subcontractor shall maintain books, records, documents, and other evidence to substantiate, without limitation, all costs incurred under or in connection with the subcontract and to substantiate the other subcontract requirements in accordance with generally accepted accounting principles prevailing in the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to substantiate properly all transactions under or in connection with the subcontract. This clause does not apply to cost records for non-reimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to records concerning source of goods and other comparable contract requirements applicable to such items. The foregoing constitutes "records" for the purpose of this clause.

The Subcontractor shall maintain such records during the subcontract term and for a period of three (3) years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this subcontract shall be retained until such appeals, litigation, or claims have been finally settled.

All records shall be subject to inspection and audit by DAI, its Funding Agency, or its authorized agents at all reasonable times. The Subcontractor shall afford the auditor proper facilities for such inspection and audit.

# INVOICING INSTRUCTIONS

## Invoicing Instructions

The Subcontractor shall submit invoices to DAI’s Accounts Payable department and concurrently submit a copy to the Chief of Party, at the address listed in Contract Data.

Electronic copies will be accepted provided the original invoice with all documentation is received within three (3) days of the electronic submission.

## Required Documentation for Payment

Invoices submitted to DAI must include the following:

* + 1. Subcontractor Name and Address
    2. Invoice Date and Invoice Number
    3. Subcontract Agreement Number
    4. Subcontractor’s DUNS number
    5. DAI Contract Number
    6. Subcontractor Remittance Address
    7. Total payment requested

The payment requested statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

1. The estimated Subcontract value of the Temporary and Permanent Works executed up to the end of the month in question, at the unit rates and prices included in the Contract;
2. The actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices included in the Contract;
3. The estimated Subcontract value at the unit rates and prices included in the Subcontract of the Temporary and Permanent Works for the month in question, obtained by deducting (b) from (a);
4. The value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate;
5. Any credit or debit for the month for Materials on Site;
6. Any amount to be withheld under the retention provision determined by applying the percentage to the amounts in due;
7. Any other sum to which the Subcontractor may be entitled under the Contract or otherwise.
   * 1. Certification signed by DAI’s Engineer, or Engineer’s Representative, verifying the quality and acceptability of the deliverables, i.e., Work performed during the period, in accordance with the Payment Schedule and Schedule of Deliverables
     2. Copies of Progress Report(s) submitted during the timeframe
     3. Copies of Progress Meeting Note(s) during the timeframe
     4. Digital Photographs of the Work completed during the invoice period

In addition to the above, each copy of the invoice must contain the following certification, signed by an authorized representative of the Subcontractor’s organization. Failure to provide the required invoice information will result in the invoice being returned to the Subcontractor for correction.

Subcontractor certification:

I hereby certify, to the best of my knowledge and belief, that

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;

(3) This request for payment does not include any amounts which the Subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4 This certification is not to be construed as final acceptance of the Subcontractor’s performance.

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(Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
(Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
(Date)

## Taxes Withheld from Payments

DAI will withheld, on behalf of Subcontractor 2% of tax required by Haitien Government from any payment made to subcontractor. Tax amount withheld will be paid to Direction General des Impots (DGI) by DAI on behalf of subcontractor.

## Payment Terms

DAI shall pay the subcontractor within 15 calendar days after receipt of a proper invoice and acceptance of deliverables outlined Appendix F, Schedule of Deliverables and Appendix G, Schedule of Payments, of this subcontract agreement. DAI shall reserve the right to withhold payment if the subcontractor fails to meet its obligations, in part or in full under this purchase order.

## Final Payment

Final payment to the Subcontractor, including the balance of the retention, is withheld until the Subcontractor has met all its obligations under the Subcontract. Final Payment shall be made following:

1. Issuance of Certificate of Completion and Final Acceptance of the Work to the Subcontractor indicating that completion and acceptance of the Work has been certified by the Engineer and the COP
2. Receipt of Final Report
3. Receipt of required product and installation certifications and warranties, Operations and Maintenance manuals, trainings or materials as required
4. Confirmation that all Defects and Liabilities requests by the beneficial occupant or owner have been resolved to the satisfaction of the Engineer
5. Receipt of signed Release by the Subcontractor of all future monetary claims against DAI

The making of final payment by DAI to the Subcontractor constitutes a waiver of Claims by DAI, except those arising from:

* 1. Liens, claims, security interests or encumbrances arising out of the Subcontract and unsettled
  2. Failure of the Work to comply with the requirements of the subcontract agreement
  3. Terms of special warranties required by the subcontract agreement

## Final Invoice

Notwithstanding any other provision in this Agreement to the contrary, the Subcontractor is required to submit the final request for payment application/invoice, appropriately marked as such, under this Agreement not later than thirty (30) calendar days after the Certificate of Final Completion and Acceptance. Any invoices received after that date will not be paid by DAI. All final invoices must be marked as such, and the following shall accompany the final invoice:

1. A certification by the Subcontractor that its suppliers, if any, have been paid.
2. A release signed by the Subcontractor discharging DAI of and from any liabilities, obligations, and claims arising out of or under this Subcontract.

## Monies due by the Subcontractor

Whenever throughout the life of the Subcontract and before final payment, certain monies become due by the Subcontractor, DAI shall have the right to recover such costs by either of the following methods or combination thereof:

1. Deduction from monies due the Subcontractor, or to become due the Subcontractor, or being retained by DAI pending final acceptance of the Work, or
2. Recovery from the Subcontractor's performance and/or payment security/bond.

## Liquidated Damages

*FAR Clause 52.211-12 “Liquidated Damages – Construction” (APR 1984)*

In the event that the Subcontractor does not complete the Work within the number of days indicated in the Contract Data following the end of the completion period of the Subcontract then the Liquidated Damages shall be levied beyond this period shall be deducted from the final payment until the Work is authorized as completed by the Engineer and COP.

The Parties mutually agree that if the Project is delayed, Contractor OR Owner will suffer significant damages that are difficult to ascertain and quantify. As such, the Parties mutually agree to a liquidated daily rate specified in the Contract Data as fair and reasonable compensation to Contractor and not as a penalty. The said sum shall be payable by the sole fact of the delay without the need for any previous notice or any legal proceedings, or proof of damage, which shall in all cases be considered as ascertainable.

# BONDS, INSURANCE, AND RISK ALLOCATION

## Performance Security

For United States Government (USG) funded projects (including those funded by the United States Agency for International Development (USAID), the Federal Acquisitions Regulation (FAR) requires performance bonds and payment bonds for all construction subcontracts with values above the simplified acquisition threshold, currently at $150,000 USD. (FAR 28.102-1).

Subcontractor shall, at its own expense, obtain and provide to DAI a Performance Security in the form of Bank Guarantee from a reputable Haitian Bank or an international Bank, acceptable to DAI within the time period outlined in Appendix F, Schedule of Deliverables. The security shall be issued in the format and language approved by DAI, and shall cover performance, payments, and any mobilization. The amount of the performance security shall not be less than 15% of the Total Subcontract Value and shall be in U.S. dollars.

The Performance Security shall remain valid until the Subcontractor has executed and completed the Work and remedied any defects therein in accordance with this Subcontract. The Performance Security will be called upon after a written statement, stating that DAI is in breach of its obligations under the Contract, is received by the Subcontractor. The Surety will promptly make payments to all persons, firms, subcontractors, and corporations furnishing materials and/or financing, or performing labor in the execution of the work provided for in such contract, including all amounts due for supplies, labor, transportation, equipment, tools, repairs on machinery, and materials consumed or used in connection with the construction of such work, and for all labor, performed in such work whether by subcontractor or otherwise.

Prior to making any claim under the Performance Security, DAI shall, in every case, notify the Subcontractor in writing stating the nature of the default in respect of which claim is made.

## Insurance

The Subcontractor agrees to maintain, and show proof of coverage within 10 days of contract signature, liability insurance as required and customary in the construction industry in the Republic of Haiti and include:

1. General liability insurance as required by the Government of Haiti and any other applicable laws and as prescribed;
2. Worker's compensation insurance covering each employee to the extent required by the Government of Haiti;
3. Insurance to cover any damages or destruction of works, for whatever cause;
4. Insurance coverage for equipment and tools used under this Contract; and
5. All social insurance as required by applicable laws for all employees.

Adequate liability insurance shall be maintained for all personnel and equipment during the entire period of performance of this Subcontract. Such insurance will protect the Subcontractor and its employees, DAI, and the Funding Agency from the following claims which may arise out of or result from its operations hereunder (whether by itself, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable): claims under workmen's compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease, or death, of its employees or any other person; claims which are sustained by any person as a result of the actions of the Subcontractor or by any other person; and claims for damages because of injury to or destruction of tangible property, including loss of use.

## Insurance of the Work and Subcontractor's Equipment

The Subcontractor shall purchase and maintain insurance to prevent against loss or damage and cover replacement of equipment deemed necessary to complete the Work. The insurance shall provide coverage for:

* 1. The Work, together with materials and Plant for incorporation therein, to the full replacement cost
  2. An additional sum of 15 percent (15%) of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Work and of removing debris of whatsoever nature
  3. The Subcontractor's Equipment and other things brought onto the Site by the Subcontractor, for a sum sufficient to provide for their replacement at the Site

Delays in the Work due to loss or damage to construction equipment which is not insured are not considered excusable delays.

## Insurance Against Accident to Workmen

DAI shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Subcontractor or any other subcontractor. The Subcontractor shall indemnify and keep indemnified DAI against all claims, proceedings, damages, cost, charges and expenses whatsoever in respect thereof or in relation thereto.

The Subcontractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him or her on the Work. Provide that, in respect of any of any persons employed by any subcontractor, the Subcontractor’s obligations to insure as aforesaid under this clause shall be satisfied if the subcontractor shall have insured against liability in respect of such persons in such a manner that DAI is indemnified under the policy, but the Subcontractor shall require such subcontractor to produce to DAI, when required, such policy of insurance and the receipt of the payment of the current premium.

The subcontractor shall maintain Defense Based Act (DBA) insurance as required in Contract Data, and as described in the Special Provisions of this subcontract agreement.

## Third Party Insurance

The Subcontractor shall, without limiting its or DAI’s obligations and responsibilities, insure, in the joint names of the Subcontractor and DAI, against liabilities for death of or injury to any person or loss of or damage to any property or loss of or damage to any property (other than the Work) arising out of the performance of the Subcontract.

## Evidence of Insurance

Prior to the issuance of a Notice to Proceed, the Subcontractor shall furnish DAI with Certificates of Insurance, for those listed above, as documentation that all insurance required herein has been effected. Each insurer must be reasonably acceptable to DAI, licensed to conduct business in all countries where this Subcontract shall apply. If requested, Subcontractor shall provide copies of receipts for the payment of the current premium. It is specifically agreed that the types and amounts of insurance shall not limit Subcontractor’s liability to indemnify, defend, and hold DAI harmless.

DAI may investigate, approve, or reject the credibility and rating of the Insurance Company, i.e. surety.

The subcontractor shall provide evidence of insurance renewals upon expiration of an insurance policy that expires during the period of performance.

Subcontractor shall provide at least thirty (30) days prior written notice of cancellation or material change in any insurance.

## Indemnification

The Subcontractor shall defend, indemnify, and hold harmless, DAI, and the Funding Agency, agents, officers and directors, and employees, from and against any and all claims, liability, losses, cost or expenses, including attorney's fees, arising out of the acts, errors or omissions of the Subcontractor, its agents, officers and directors, employees, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

Specifically, in regard to damage to persons and property, the Subcontractor shall indemnify DAI and the Funding Agency against all losses and claims in respect of: (a) death of or injury to any person, or (b) loss of or damage to any property which may arise out of or in consequence of the execution and completion of the Work and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Likewise, DAI shall defend, indemnify, and hold harmless the Subcontractor and its agents, officers and directors, and employees from and against all claims, liability, losses, cost or expenses, including attorney's fees, arising out of the acts, errors or omissions of DAI, its agents, officers and directors, employees, subcontractors, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

## Relationship of Parties

The Subcontractor has entered into this Agreement as an independent contractor. Nothing contained herein shall be construed as creating the relationship of employer and employee between Subcontractor and DAI or any of its employees.

## Rights and Remedies

No failures of or delay by DAI in the exercise of any right under this Agreement shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other such right. The waiver by DAI of any breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach or of any other provision of this Subcontract.

Neither DAI nor its Funding Agency's review, approval, nor payment for, any of the services required under this Agreement shall be construed to have operated as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Subcontract and the Subcontractor shall be and remain liable to DAI and its Funding Agency for damages caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.

The rights and remedies of DAI or the Subcontractor provided for under this Agreement are in addition to any other rights and remedies provided by law.

## Dispute Resolution

Any controversy or claim arising out of or relating to the terms of this Subcontract or any Task Order issued hereunder, or the breach thereof, which cannot be settled amicably, shall be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The place of arbitration shall be Maryland, United States of America. The language to be used in the arbitral proceedings shall be English. As independent, irrevocable covenants to each other, neither party will institute any action or proceed against the other party in any court or judicial forum concerning any matter under dispute, other than to seek entry of a judgment upon an award rendered by the arbitrator(s) pursuant to these terms and conditions. The provisions shall survive the termination or expiration of the Subcontract. During the term of any pending controversy or claim hereunder, the Subcontractor shall proceed diligently with the performance of the Work under the Subcontract in accordance with the direction(s) given by DAI.

## Legal Effect of Funding Agency Approvals and Decisions

The parties hereto understand that the subcontract has reserved to the Funding Agency certain rights such as, but not limited to, the right to approve the terms of this subcontract, the Subcontractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this subcontract and the project of which it is part. The parties hereto further understand and agree that the Funding Agency, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure that proper use of funds, and that any decision by the Funding Agency to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making the Funding Agency a party to the subcontract. The parties hereto understand and agree that the Funding Agency may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibilities or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by the Funding Agency shall not bar DAI or the Funding Agency from asserting any right, or relieve the Subcontractor of any liability which the Subcontractor might otherwise have to DAI or the Funding Agency.

## Applicable Law

In the performance of the Work under this Subcontract, the Subcontractor shall comply with all applicable laws, rules, and regulations. This Subcontract shall be construed, interpreted and applied in accordance with the laws of the State of Maryland, except those portions of the Federal Acquisition Regulation (FAR) or other regulations applicable to government procurement that are incorporated by full text or reference in the Subcontract. These provisions shall be interpreted in accordance with the Federal common law of Government as applied by the Federal Courts, Board of Contract Appeals, and quasi-judicial agencies of the Federal government.

## Fraud Awareness and Reporting

The Subcontractor will immediately report any instances of fraud, waste, abuse, conflict of interests concerning its staff, consultants, vendors or 2nd-tier subcontractors on this Project to: the DAI Global LLC website as follows:

If you have a question or concern on ethics or compliance that you’d like to communicate to DAI, please contact the Chief, Ethics and Compliance Officer directly at +1-301-771-7998 or at [ethics@dai.com](mailto:ethics@dai.com). If you wish to remain anonymous, please visit [www.ethicspoint.com](http://www.ethicspoint.com) and choose “File a New Report.” Enter DAI, select a country, and file your report. A hotline number for your country will also present itself. The Ethicspoint hotline service provides translations if necessary. All reports will be reviewed and responded to appropriately.

Subcontractor will ensure compliance with FAR 52.203-13 (Reporting Requirements).

# SUSPENSION AND TERMINATION

## Suspension of the Work

TheSubcontractor will, upon written notice from Subcontracts Administrator identified in the Contract Data, suspend, delay, or interrupt all or a part of the scope of the Work. In such event, the Subcontractor will resume the Work upon the suspended activities upon written notice from DAI. If any suspension, delay or interruption causes an increase or decrease in the Subcontractor’s cost of, or the time required for, the performance of any part of the Work, DAI shall make an equitable adjustment and modify the Agreement in writing. Any claim by the Subcontractor for an adjustment under this paragraph must be asserted in writing, fully supported by factual information, to the Subcontracts Administrator within thirty (30) calendar days from the date of receipt by Subcontractor of the written notice of suspension from DAI or within such extension of that 30 day period, as DAI, in its sole discretion, may grant in writing at the Subcontractor's request prior to expiration of said period. Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in time or compensation. If the Work is reduced by a change authorization issued hereunder, such action will not be the basis for a claim based on loss of anticipated profits.

## Termination for Default

DAI may, by written notice, terminate the whole or any part of a Subcontract issued hereunder for default in the event that the Subcontractor fails to perform any of the provisions of this Subcontract or, in the opinion of DAI, becomes financially or legally incapable of completing the Subcontract and does not correct such to DAI’s reasonable satisfaction within a period of seven (7) calendar days after receipt of a written cure notice from DAI specifying such failure. Failures may include, but are not limited to:

1. Repeatedly refusing or failing to supply enough properly skilled workers or properly materials;
2. Failing to make payment to subcontractors for materials or labor in accordance with the respective agreements;
3. Repeatedly disregarding applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
4. Being found guilty or negligent of a substantial breach of a provision in this subcontract agreement, including repeated failure to conform to drawings or specifications; or
5. Failure to progress the work such that Contractor has a reasonable concern that Subcontractor will not finish the work by the subcontract completion date.

If, after notice of termination, it is determined for any reason that Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to termination for convenience. In the event of termination for default, Subcontractor will not be entitled to termination expenses. Regardless of the cause of termination, the Subcontractor shall deliver to DAI legible copies of all completed or partially completed Work and documents including, but not limited to, laboratory, field, or other notes, log book pages, technical data, computations, and designs. In the event of termination, DAI will be entitled to recover from Subcontractor any additional costs it incurs in completing Subcontractor’s scope of work.

## Termination for Convenience by DAI

All or part of the Work issued hereunder may be terminated by DAI for its convenience upon thirty (30) days written notice to the Subcontractor. In such event, Subcontractor will be entitled to compensation for services competently performed up to the date of termination and its allowable, allocable, and reasonable termination expenses as determined by applicable Funding Agency. Subcontractor will not be permitted to recover profit or overhead on unperformed work.

# Appendix A: SPECIAL SUBCONTRACT PROVISIONS

The following clauses are incorporated from the Prime Task Order and are applicable to this Subcontract:

A.1 AIDAR 752.225-70 (FEB 2012) Source & Nationality Requirements/Geographic Code

(a) Except as may be specifically approved by the USAID Contracting Officer, the Subcontractor must procure all commodities (e.g. equipment, materials, vehicles, supplies) and services (including transportation services) in accordance with the requirements of CFR Part 228 “Rules on Procurement of Commodities and Services Finance by USAID Federal Program Funds”.

The authorized source for procurement for this subcontract is Geographic Code 937.

Guidance on eligibly of specific goods or services may be obtained from the DAI Subcontracts Administrator.

(b) Ineligible goods and services. The Subcontractor shall not procure any of the following goods or services under this subcontract:

1. Military equipment
2. Surveillance equipment
3. Commodities and services for support of police or other law enforcement activities
4. Abortion equipment
5. Luxury goods and gambling equipment or
6. Weather modification equipment

(c) Prohibited Sources

The Subcontractor agrees not to procure any goods or services with the origin from the Office of Foreign Assets Control (OFAC) prohibited countries. The current list of those countries under comprehensive sanctions are Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria. The most current list can be found on the Department of Treasury website at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx. Goods may not transit through, be manufactured or assembled in those countries, nor can a vendor be owned or controlled by a prohibited country.

A.2 Worker’s Compensation Insurance (Defense Base Act) (Apr 1984)

The Subcontractor shall secure, and provide evidence of Defense Based Act (DBA) insurance for all its personnel, in a time frame in accordance with Appendix F: Schedule of Deliverables, before commencing performance under this contract, such workers’ compensation insurance or security as the Defense Base Act ([42 U.S.C. 1651](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), et seq.) requires and (b) continue to maintain it until performance is completed. Failure to obtain DBA insurance may result in fines and penalties that are the responsibility of the Subcontractor.” If the U.S. Department of Labor grants a waiver for the country, DBA insurance may not be required. See Contract Data for exact requirements for this particular subcontract agreement.

A.3 DUNS Number

The Subcontractor shall provide to DAI its Data Universal Numbering System (DUNS) number prior to award and signature by DAI of this subcontract agreement, as defined by the solicitation requirements. This system is developed and regulated by Dun & Bradstreet (D&B) and assigns a unique numeric identifier, referred to as a "DUNS number" to a single business entity. Created in 1962, the Data Universal Numbering System or D-U-N-S® Number is D&B's copyrighted, proprietary means of identifying business entities on a location-specific basis. The US government uses DUNS numbers as a way to keep track of how federal assistance money is awarded and dispersed

A.4 Executive Order on Terrorism Financing (AAPPD 02-04, Mar 2002)

The Subcontractor/Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Subcontractor/recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/sub-awards issued under the Prime Contract.

In addition to conducting a background check for any new personnel, Subcontractor agrees to conduct a search for the prospective employees name on the following site:

<http://www.treasury.gov/offices/enforcement/ofac/sdn/index.html>

A print out from the website verifying that the prospective new employee’s name does not appear on the list shall be submitted to the DAI Subcontracts Manager identified in Article 9 herein for DAI’s records.

A.5 Foreign Corrupt Practices Act

In the performance of its obligations under this Agreement, Subcontractor, its officers, directors, agents and employees shall comply strictly with all applicable laws, regulations and orders including but not limited to the Foreign Corrupt Practices Act of the United States. Subcontractor hereby acknowledges and agrees that certain laws of the United States of America prohibit any person from making any payment of money or anything of value, directly or indirectly, to any government official, political party, or candidate for political office for the purpose of obtaining or retaining business. Subcontractor hereby represents and warrants that, in the performance of its obligations hereunder, it has not made or offered to make, and will not make or offer to make, any such proscribed payment. Any such practice will be grounds for cancelling the award of this contract and for such other additional actions, civil and/or criminal as may be applicable.

A.6 USAID Disability Policy – Acquisition (December 2004)

(a) The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following website:

<http://www.usaid.gov/about/disability/DISABPOL.FIN.html>.

*(b) USAID therefore requires that the Subcontractor not discriminate against people with disabilities in the implementation of USAID programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing this subcontract. To that end and within the scope of the subcontract, the Subcontractor’s actions must demonstrate a comprehensive and consistent approach for including men, women and children with disabilities.*

A.7 Anti-Trafficking

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this subcontract may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(b) DAI may terminate this subcontract, without penalty, if the Subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, subcontract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, subcontract, or cooperative agreement.

A.8 Prohibition of Assistance to Drug Traffickers

DAI reserves the right to terminate this Subcontract, to demand a refund, or take other appropriate measures if the Subcontractor is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140 and ADS 206.

A. 9 Reporting of Foreign Taxes

(a) Final and Interim Reports. The Subcontractor must annually submit two reports:

(1) an interim report by November 17; and

(2) a final report by April 16 of the next year.

(b) Contents of Report. The reports must contain:

(1) Subcontractor name.

(2) Subcontractor name with phone, fax and email.

(3) Subcontract number, Prime contract number.

(4) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately]on commodity purchase transactions valued at $500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year. NOTE: For fiscal year 2003 only, the reporting period is February 20, 2003 through September 30, 2003.

(5) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).

(6) Any reimbursements received by the Subcontractor during the period in (iv) regardless of when the foreign tax was assessed plus, for the interim report, any reimbursements on the taxes reported in (iv) received by the recipient through October 31 and for the final report, any reimbursements on the taxes reported in (iv) received through March 31.

(7) The final report is an updated cumulative report of the interim report.

(8) Reports are required even if the Subcontractor did not pay any taxes during the reporting period.

(9) Cumulative reports may be provided if the Subcontractor is implementing more than one program in a foreign country.

(c) Definitions. For purposes of this clause:

(1) “Agreement” includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(2) “Commodity” means any material, article, supply, goods, or equipment.

(3) “Foreign government” includes any foreign governmental entity.

(4) “Foreign taxes” means value-added taxes and custom duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

(d) Where. The Subcontractor will submit the reports to DAI’s COP.

For further information see <http://www.state.gov/m/rm/c10443.htm>.

A.10 Notification of Ownership Changes (Oct 1997)

(a) The Subcontractor shall make the following notifications in writing:

(1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify the Subcontracts Administrator within 30 days.

(2) The Subcontractor shall also notify the Subcontract Administrator within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Subcontractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide the Subcontract Administrator or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

(c) DAI shall include the substance of this clause in all subcontracts under this subcontract that meet the applicability requirement of FAR 15.408(k).

A.11 AIDAR 752.7009 Marking (JAN 2007)

(a) It is USAID policy that USAID-financed commodities and shipping containers, and project construction sites and other project locations be suitably marked with the USAID emblem. Shipping containers are also to be marked with the last five digits of the USAID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semi-finished products which are not packaged.

(b) Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the cognizant technical office indicated on the cover page of this subcontract, or by the Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.

(c) Authority to waive marking requirements is vested with the Regional Assistant Administrators, and with Mission Directors.

(d) A copy of any specific marking instructions or waivers from marking requirements is to be sent to the DAI COP and DAI Subcontracts Manager identified in Article 9 herein; the original should be retained by the Subcontractor.

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# APPENDIX B: GENERAL PROVISIONS

**FAR and AIDAR Provisions.**

The Subcontractor agrees to comply with all applicable requirements, specifications, and conditions of the Prime Contract as are, in turn, incorporated into this Subcontract. Any applicable requirements, specifications, and conditions of the Prime Contract specified by law, are included in this Subcontract. Unless a current version of a clause is specifically incorporated in the body of this Subcontract, to the extent that an earlier version of any such clause is included in the Prime Contract under which this Subcontract is issued, the date of the clause as it appears in such Prime Contract shall be controlling and said version shall be incorporated herein. In all such clauses the term “Contractor” shall mean the Subcontractor performing under this Subcontract, the term “Contract” shall mean this Subcontract, and the terms “Government,” “Contracting Officer,” and equivalent phrases shall mean DAI and the DAI Subcontract Manager, respectively. It is intended that the referenced clauses shall apply to the Subcontractor in such a manner as is necessary to reflect the position of the Subcontractor as a Subcontractor to the Prime Contractor, to insure the Subcontractor’s obligations to the Prime Contractor and the U.S. Government, and to enable the Prime Contractor to meet its obligations under its Prime Contract. Clauses not requiring flow down from DAI to the Subcontractor, but nevertheless specified herein shall have full force and effect in performance of this Agreement.

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

<http://arnet.gov/far>  
<http://www.usaid.gov>

**FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)**

|  |  |  |
| --- | --- | --- |
| **NUMBER** | **TITLE** | **DATE** |
| 52.202-1 | DEFINITIONS | JUL 2004 |
| 52.203-3 | GRATUITIES | APR 1984 |
| 52.203-5 | COVENANT AGAINST CONTINGENT FEES | APR 1984 |
| 52.203-6 | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT | JUL 1995 |
| 52.203-7 | ANTI-KICKBACK PROCEDURES | OCT 2010 |
| 52.203-8 | CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY | JAN 1997 |
| 52.203-10 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY | JAN 1997 |
| 52.203-12 | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS | OCT 2010 |
| 52.209-6 | PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED SUSPENDED, OR PROPOSED FOR DEBARRMENT | OCT 2010 |
| 52.215-2 | AUDIT AND RECORDS – NEGOTIATION | OCT 2010 |
| 52.215-10 | PRICE REDUCTION FOR DEFECTIVE COSTS OR PRICING DATA – MODIFICATION | OCT 2010 |
| 52.215-12 | SUBCONTRACTOR COST OR PRICING DATA | OCT 2010 |
| 52.215-13 | SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS | OCT 2010 |
| 52.215-14 | INTEGRITY OF UNIT PRICES | OCT 2010 |
| 52.222-50 | COMBATING TRAFFICKING IN PERSONS | FEB 2009 |
| 52.228-04 | WORKSER’S COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS | APR 1984 |
| 52.228-07 | INSURANCE – LIABILITY TO THIRD PERSONS | MAR 1996 |
| 52.232-20 | LIMITATION OF COST | APR 1984 |
| 52.232-22 | LIMITATION OF FUNDS | APR 1984 |
| 52.242-15 | STOP-WORKS ORDER | AUG 1989 |
| 52.223-5 | POLLUTION PREVENTION AND RIGHT-TO-KNOW | MAY 2011 |
| 52.223-14 | TOXIC CHEMICAL RELEASE REPORTING | OCT 2000 |
| 52.225-13 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES | JUN 2008 |
| 52.227-4 | PATENT INDEMNITY--CONSTRUCTION CONTRACTS | DEC 2007 |
| 52.229-6 | TAXES--FOREIGN FIXED-PRICE CONTRACTS | JAN 1991 |
| 52.232-17 | INTEREST | OCT 2010 |
| 52.232-23 | ASSIGNMENT OF CLAIMS | JAN 1986 |
| 52.233-1 | DISPUTES | JUL 2002 |
| 52.233-3 | PROTEST AFTER AWARD | AUG 1996 |
| 52.236-3 | SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORKS | APR 1984 |
| 52.236-5 | MATERIAL AND WORKSMANSHIP | APR 1984 |
| 52.236-6 | SUPERINTENDENCE BY THE SUBCONTRACTOR | APR 1984 |
| 52.236-7 | PERMITS AND RESPONSIBILITIES | NOV 1991 |
| 52.236-8 | OTHER CONTRACTS | APR 1984 |
| 52.236-9 | PROTECTION OF EXISTING VEGETATION STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS | APR 1984 |
| 52.236-10 | OPERATIONS AND STORAGE AREAS | APR 1984 |
| 52.236-11 | USE AND POSSESSION PRIOR TO COMPLETION | APR 1984 |
| 52.236-12 | CLEANING UP | APR 1984 |
| 52.236-13 | ACCIDENT PREVENTION | NOV 1991 |
| 52.236-15 | SCHEDULES FOR CONSTRUCTION CONTRACTS | APR 1984 |
| 52.236-17 | LAYOUT OF WORKS | APR 1984 |
| 52.236-26 | PRECONSTRUCTION CONFERENCE | FEB 1995 |
| 52.242-13 | BANKRUPTCY | JUL 1995 |
| 52.243-4 | CHANGES | AUG 1987 |
| 52.244-5 | COMPETITION IN SUBCONTRACTING | DEC 1996 |
| 52.249-2 | TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) ALTERNATE I | MAY 2004 |
| 52.249-10 | DEFAULT (FIXED-PRICE CONSTRUCTION) | APR 1984 |
| 52.253-1 | COMPUTER GENERATED FORMS | JAN 1991 |

**AID ACQUISITION REGULATIONS (48 CFR CHAPTER 6)**

|  |  |  |
| --- | --- | --- |
| 752.202-1(b) | DEFINITIONS | JAN 1990 |
| 752.202-1(d) | DEFINITIONS FOR OVERSEAS CONTRACTS | AUG 1999 |
| 752.204-2 | SECURITY REQUIREMENTS | FEB 1999 |
| 752.211-70 | LANGUAGE AND MEASUREMENT | JUN 1992 |
| 752.255-70 | SOURCE AND NATIONALITY REQUIREMENTS | FEB 2012 |
| 752.226-2 | SUBCONTRACTING WITH DISADVANTAGED ENTERPRISES | JUL 1997 |
| 752.226-3 | LIMITATIONS ON SUBCONTRACTING | JUN 1993 |
| 752.228-3 | WORKSER'S COMPENSATION INSURANCE (DEFENSE BASE ACT) | APR 1984 |
| 752.228-7 | INSURANCE-LIABILITY TO THIRD PERSONS | JUL 1997 |
| 752.228-9 | CARGO INSURANCE | DEC 1988 |
| 752.228-70 | MEDICAL EVACUATION (MEDVAC) SERVICES | JUL 2007 |
| 752.231-71 | SALARY SUPPLEMENTS FOR HG EMPLOYEES | OCT 1998 |
| 752.245-70 | GOVERNMENT PROPERTY - USAID REPORTING REQUIREMENTS | JUL 1997 |
| 752.245-71 | TITLE TO AND CARE OF PROPERTY | APR 1984 |
| 752.247-70 | PREFERENCE FOR PRIVATELY OWNED US FLAG COMMERCIAL VESSELS | FEB 1999 |
| 752.7003 | DOCUMENTATION FOR PAYMENT | APR 1984 |
| 752.7008 | USE OF GOVERNMENT FACILITIES OR PERSONNEL | APR 1984 |
| 752.7010 | CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY | APR 1984 |
| 752.7013 | CONTRACTOR-MISSION RELATIONSHIPS | OCT 1989 |

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# Appendix C: Scope of work and Technical

# Specifications

Incorporated by reference.

# Appendix D: Construction Drawings

Incorporated by reference

# Appendix E: Schedule of Deliverables

The following items shall be delivered under this subcontract:

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Deliverable** | **Quantity** | **Delivery Date or Requirements** | **Deliver To** |
| Pre-Construction Conference  Evidence of Insurance:   * General Liability Insurance * Equipment Insurance * Workman’s compensation Insurance * DBA insurance   Work Schedule/Program  Health and Safety Plan  Quality Assurance Plan  Performance Bond | 1 | Maximum 10 days following award.  Prior to Notice to Proceed is issued.  Prior to mobilization payment | DAI COP  DAI Subcontracts Administrator  DAI Project Engineer |
| Monthly Payment Request or Application/ Invoice | 2 | Following joint measurement to ascertain the works satisfactorily executed.  Signed and verified by the Project Engineer or Engineer’s Representative after measurement/inspection.  Copies of Progress Reports and Site Meeting Notes shall be included with each Payment Request. | DAI’s Accounts Payable  DAI Engineer |
| Progress Reports | 1 | Monthly, 5 days before monthly site meetings. | DAI Project Engineer |
| Site Meetings | 1 | Monthly | DAI Project Engineer |
| Schedule updates | 1 | Monthly, or as needed when delays are identified. | DAI Project Engineer |
| Final Report | 2 | Before final inspection | DAI Engineer and DAI COP |
| Request for Substantial Completion Inspection | 1 | 5 days before inspection | DAI Engineer and DAI COP |
| As Built Drawings and product warranties and instruction manuals  Operation Manuals, training or materials, as required | 1 | 5 days before Final Completion | DAI Engineer and DAI COP |
| Request for Final Completion and Acceptance Inspection | 1 | 5 days before inspection | DAI Engineer and DAI COP |