

FLUOR FERNALD, INC.

SECTION A

**FLUOR FERNALD
SOLICITATION, OFFER AND AWARD**

1. Contract No.	2. Solicitation No. F04PB13013	3. Type of Solicitation G Sealed Bid (IFB) X Negotiated (RFP)	4. Date Issued	5. RFP: Sections A - M Contract: Sections A - K
6. Issued By: Fluor Fernald, Inc. P. O. Box 538704 Cincinnati, OH 45253-8704				

NOTE: In sealed bid solicitations "offer" and "Offeror" mean "bid" and "bidder."

SOLICITATION

7. Sealed offers in original and eight (8) copies for furnishing the supplies or services in the Schedule will be received at the place and at the time specified in Section L. CAUTION - LATE Submissions, Modifications, and Withdrawals - See Section L. All offers are subject to all terms and conditions contained in this solicitation.

8. FOR INFORMATION CALL: <	A. NAME William Hensley	B. TELEPHONE NO. (Include area code) (No collect calls) (513) 648-4478
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OFFER (Must be fully completed by Offeror)

10. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *180 calendar days unless a different period is inserted by the Offeror* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

11. DISCOUNT FOR PROMPT PAYMENT <	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
12. ACKNOWLEDGMENT OF AMENDMENTS (The Offeror acknowledges receipt of amendments to the SOLICITATION for Offerors and related documents numbered and dated)	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

13. NAME AND ADDRESS OF OFFEROR		14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (TYPE OR PRINT)		
15. TELEPHONE NO. (Include area code)	16. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE	

AWARD (To be completed by Fluor Fernald)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT			
21. NAME AND TITLE OF SIGNER	22. SIGNATURE		23. AWARD DATE	

FLUOR FERNALD, INC.

PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT

This is an Indefinite Delivery/Indefinite Quantity contract to provide the Silos 1 and 2 Metal Shipping Containers. The Contractor shall furnish all personnel, facilities, equipment, supplies, delivery and services except as may be expressly set forth in Section H, Special Contract Requirements.

B.2 PRICE

<u>Item No.</u>	<u>Description</u>	<u>Unit of Measure</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Extended Amount</u>
01	Metal Shipping Container at the Guaranteed Minimum Quantity.	Each	300	\$ _____	\$ _____
02	Metal Shipping Container at Estimated Quantities above the Guaranteed Minimum.	Each	2700	\$ _____	\$ _____
03	Daily Trailer Demurrage Rate	Days	760	\$ _____	\$ _____
04	Weld Testing and Dimensional Inspections per Section C.3.1.	Each	160	\$ _____	\$ _____
		Subtotal Items 01 through 04:			\$ _____
	Option Items				
05	Metal Shipping Container.	Each	4000	\$ _____	\$ _____
		Estimated Total Amount:			\$ _____

Notes:

- (1) The Unit Price for Item 01 is based on the guaranteed minimum quantity that Fluor Fernald will be obligated to buy from the Contractor. The Unit Price for Items 02 and 05 will be applicable for all releases above the guaranteed minimum quantity in Item 01.
- (2) Funding for the Estimated Quantities in Items 03 and 04 will be obligated on a per release basis as determined by Fluor Fernald.

B.3 ORDER QUANTITIES

The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract. The Contractor shall furnish to Fluor Fernald, when ordered, the supplies or services specified in the Schedule up to and including the maximum quantity of 150% of the estimated quantity in the Schedule. Fluor Fernald shall order a guaranteed minimum of 10% of the estimated quantity of supplies or services (Item No. 01) designated in the Schedule. The guaranteed minimum and maximum order quantities shall apply to the base contract and the option item, if exercised.

B.4 OBLIGATION OF FUNDS

Funding will be obligated only by individual releases made against this contract.

FLUOR FERNALD, INC.

SECTION C

PART I - THE SCHEDULE

SECTION D - PACKAGING AND MARKING

D.1 PACKAGING

Preservation, packaging and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to ensure acceptance by a common carrier and safe transportation at the most economical rate unless specific packaging and shipping instructions are provided in Attachment I, General Shipping Instructions, of Section J, List of Attachments.

D.2 MARKING

Each package, report or other deliverable required by the Schedule, Statement of Work or other parts of the contract shall be accompanied by a letter or other document which:

- (a) Identifies the contract by number under which the item is being delivered.
- (b) Identifies the deliverable Item Number or Report Requirement that requires the delivered item(s).
- (c) Complies with marking requirements of Attachment I, General Shipping Instructions, of Section J, List of Attachments, if any.

D.3 – D.100 RESERVED

D.101 F.O.B.

Materials to be delivered under this contract are to be shipped F.O.B. (Destination) in accordance with the General Shipping Instructions of Section J.

D.102 - D.200 RESERVED.

PART I – THE SCHEDULE

**SECTION E – INSPECTION AND ACCEPTANCE
(FIXED-PRICE SUPPLY)**

E.1 INSPECTION OF SUPPLIES—FIXED-PRICE [*As derived from FAR 52.246-2 (Aug 1996)*]

- (a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall provide and maintain an inspection system acceptable to Fluor Fernald covering supplies under this contract and shall tender to Fluor Fernald for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to Fluor Fernald during contract performance and for as long afterwards as the contract requires. Fluor Fernald may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.
- (c) Fluor Fernald has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Fluor Fernald shall perform inspections and tests in a manner that will not unduly delay the work. Fluor Fernald assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- (d) If Fluor Fernald performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, Fluor Fernald shall bear the expense of its inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, Fluor Fernald shall not be liable for any reduction in the value of inspection or test samples.
- (e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, Fluor Fernald may charge to the Contractor the additional cost of inspection or test.
- (2) Fluor Fernald may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

FLUOR FERNALD, INC.

- (f) Fluor Fernald has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Fluor Fernald may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, Fluor Fernald may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, Fluor Fernald may either
- (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or
 - (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, Fluor Fernald may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i) (1) If this contract provides for the performance of quality assurance at source, and if requested by Fluor Fernald, the Contractor shall furnish advance notification of the time -
- (i) When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and
 - (ii) When the supplies will be ready for inspection.
- (2) Fluor Fernald's request shall specify the period and method of the advance notification and the Fluor Fernald representative to whom it shall be furnished. Requests shall not require more than 7 workdays of advance notification.
- (j) Fluor Fernald shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Fluor Fernald failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on Fluor Fernald, for nonconforming supplies.
- (k) Inspections and tests by Fluor Fernald do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

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(1) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, Fluor Fernald, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor;

(1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the election of Fluor Fernald, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and Fluor Fernald; provided, that Fluor Fernald may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or

(2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if Fluor Fernald elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as Fluor Fernald may authorize in writing) after receipt of notice from Fluor Fernald specifying such failure, Fluor Fernald shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned Fluor Fernald thereby.

E.2-E.200 RESERVED.

PART I - THE SCHEDULE

SECTION F - DELIVERIES OR PERFORMANCE

F.1 STOP WORK ORDER *[As derived from FAR 52.242-15 (Aug 1989)]*

(a) Fluor Fernald may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, Fluor Fernald shall either --

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of Fluor Fernald, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. Fluor Fernald shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Fluor Fernald decides the facts justify the action, Fluor Fernald Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of Fluor Fernald, Fluor Fernald shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, Fluor Fernald shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.2 STOP-WORK AND SHUTDOWN AUTHORIZATION

(a) All Contractor (including the Contractor) and DOE employees have the right to stop any activity, regardless of who is performing the activity, if continuation of that activity would either: be considered an imminent danger situation or have a negative impact on the environment, safety or health of the site, the site workers, or the public. The employee shall immediately notify a Fluor Fernald representative when work is stopped pursuant to this paragraph.

(b) An imminent danger situation exists when any condition or practice could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures.

(c) A negative impact on the environment, safety or health of the site, the site workers, or the public includes situations that result in unplanned releases to the environment, uncontrolled exposures to workers or the public, or programmatic failures which could result in these situations.

(d) Fluor Fernald may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.

(e) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to reflect the identity of the parties in in all subcontracts containing the clause at I.112, AIntegration of Environment, Safety, and Health into Work Planning and Execution.@

F.3 TERM OF THE CONTRACT

The term of this contract shall be from the date of award through September 30, 2005.

F.4 RESERVED.

F.5 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance under the contract shall be the Contractor's facility.

F.6 - F.200 RESERVED.

PART I - THE SCHEDULE

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 PREAMBLE

(a) The buyer in this contract is Fluor Fernald, Inc. (Fluor Fernald). Prior to August 28, 1996, Fluor Fernald was known as Fernald Environmental Restoration Management Corporation (FERMCO). Between that date and January 9, 2000 Fluor Fernald was known as Fluor Daniel Fernald, Inc. (FDF). As of January 10, 2000, the present name of Fluor Fernald was adopted. All references to FERMCO or FDF in correspondence, memoranda or other writings arising under, relating to or otherwise required by any provision of this contract will be understood to refer to Fluor Fernald as one and the same corporation.

(b) This contract is a subcontract entered into to meet in part the requirements of Contract DE-AC24-01OH20115 a contract in which Fluor Fernald is the Contractor and the United States Department of Energy (DOE) is the buyer. By the terms of that contract Fluor Fernald has agreed to treat appropriately requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, Fluor Fernald is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of Fluor Fernald.

(c) The Contractor shall furnish the goods and/or services covered by the contract subject to all the terms and conditions set forth in the contract including the following, which the Contractor, in accepting the contract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of goods or the performance of all or any portion of the services covered by the contract shall constitute unqualified acceptance of all Fluor Fernald terms and conditions. The terms of any quotation referred to in the contract are included and made a part of the contract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the contract.

(d) This contract uses or incorporates one or more FAR clauses by reference. The version of the FAR clause in effect as of the effective date of the contract shall apply with the same force and effect as if they were given in full text. Upon request Fluor Fernald will make the full text of the clauses available.

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(e) Neither this contract nor any portion hereof shall be assigned or delegated without Fluor Fernald's prior written consent and any such assignment or delegations shall be void. Fluor Fernald has the right to assign this contract to DOE or its designee, and in case of such assignment and notice thereof to the Contractor, Fluor Fernald shall have no further responsibility, hereunder.

(f) The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

G.2 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence. Technical correspondence (as used herein, excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms or conditions, of this agreement) shall be addressed to the Fluor Fernald Technical Representative with copy to the Fluor Fernald Contract Administrator. The mailing address is as follows:

Fluor Fernald, Inc.
P.O. Box 538704
Cincinnati, OH 45253-8704
Attn: TBD
Telephone: TBD
Facsimile: TBD

(b) Other Correspondence. All correspondence, other than technical correspondence, shall reference the contract number, and be addressed to the Fluor Fernald Contract Administrator, with information copies of the correspondence to the Fluor Fernald Technical Representative. The mailing address is as follows:

Fluor Fernald, Inc.
P.O. Box 538704
Cincinnati, OH 45253-8704
Attn.: William Hensley (Contract Administrator)
Telephone: (513) 648-4478
Facsimile: (513) 648-3912

G.3 CONTRACT ADMINISTRATION

This contract will be administered by the Contract Administrator, Manager and Technical Representative identified below.

William Hensley, Contract Administrator

Rex Norton, Manager

Technical direction will be provided by TBD.

G.4 RESERVED.

G.5 SUBMISSION OF INVOICES AND MEANS OF PAYMENT

(a) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the Contract Administrator.

(b) In the event the terms of this contract provide for payments to be made incrementally, they shall be made not more frequently than monthly at dates within each pay period determined by Fluor Fernald.

(c) An invoice must include--

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number, if applicable, and the order number, if applicable;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment, if shipped on Fluor Fernald's bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent;

(8) Name, title and phone number of person to be notified in event of defective invoice.

(9) In the event this contract is an ordering agreement with more than one release, invoicing shall be by release and clearly identified with the contract number and release number.

(d) Invoices not in conformity with the above may be returned to the Contractor.

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(e) Payment shall be made for items accepted by Fluor Fernald that have been delivered to the delivery destination(s) set forth in this contract or as otherwise provided in the contract. Payments under this contract may be made either by check, electronic funds transfer, or other automated means at the option of Fluor Fernald. In connection with any discount offered for early payment, time shall be computed from the date of receipt by Fluor Fernald of a proper invoice and all prerequisite conditions for payment have been met. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check, or the date on which an electronic funds transfer was made.

G.6-G.100 RESERVED.

G.101 OHIO SALES AND USE TAX

The Ohio Department of Taxation has issued direct pay permit number 98-002784, effective January 1, 2003 to Fluor Fernald, Inc. The responsibility for the determination of the tax liability under the sales and use tax laws and regulation of the State of Ohio, and the payment of the tax to the State rests with Fluor Fernald. The direct pay permit is applicable only to payments on purchases by Fluor Fernald from the Contractor. Fluor Fernald will make the required payment to the state and the Contractor will refrain from attempting to collect the tax.

G.102-G.200 RESERVED.

PART I - THE SCHEDULE

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 MODIFICATION AUTHORITY

The Fluor Fernald Representatives identified as the “Contract Administrator” and the “Manager” in paragraph G.3 of this contract are the only individuals authorized to bind Fluor Fernald contractually in performance of work under this contract and to:

- (a) Waive any requirement of this contract.
- (b) Modify any term of this contract, or
- (c) Modify the price of this contract.
- (d) Accept nonconforming work.

H.2 TECHNICAL DIRECTION

(a) Performance of the work under this contract may be subject to the technical direction of the cognizant Fluor Fernald Technical Representative, if identified in paragraph G.3 of his contract or in writing by the buyer otherwise. The term "technical direction" is defined to include, without limitation:

- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Statement of Work (SOW).
- (2) Provision of written information to the Contractor, which assists in the interpretations of drawings, specifications, or technical portions of the work description.
- (3) Review and, where required by the contract, approve technical reports, drawings, specifications and technical information to be delivered by the Contractor to Fluor Fernald under this contract.

(b) Technical direction must be within the SOW stated in this contract. The cognizant Fluor Fernald Technical Representative does not have the authority to, and shall not, issue any technical directions which:

- (1) Constitute an assignment of additional work outside the SOW of this contract;

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- (2) Constitute a change as defined in the Fluor Fernald Contract Clause entitled "**Changes-Fixed Price Supply**";
 - (3) In any manner causes an increase or decrease in the total estimated contract price or the time required for the contract and/or performance;
 - (4) Changes any of the expressed terms, conditions or specifications of this contract;
 - (5) Interferes with the Contractor's right to perform the terms and conditions of this contract.
- (c) All technical direction shall be issued in writing by the cognizant Fluor Fernald Technical Representative.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the Fluor Fernald Technical Representative in the manner prescribed by this article and within the Fluor Fernald Technical Representative's authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the Fluor Fernald Technical Representative falls within one of the categories defined in (b)1 through (b)5 above, the Contractor shall not proceed but shall notify the Fluor Fernald Contract Administrator in writing within five (5) working days of any such instruction or direction and shall request the Fluor Fernald Contract Administrator to modify the contract. Upon receiving the written notification from the Contractor, the Fluor Fernald Contract Administrator shall:
- (1) Advise the Contractor in writing within thirty (30) working days after receipt of the Contractor's letter that the technical direction is within the scope of this contract and does not constitute a change under the Fluor Fernald Contract Clause entitled "**Changes-Fixed Price Supply**" of this contract;
 - (2) Advise the Contractor in writing within thirty (30) working days after receipt of the Contractor's letter not to perform under the direction and to cancel the direction; or
 - (3) Advise the Contractor in writing within a reasonable time that Fluor Fernald will issue a written change order.
- (e) Failure of the Contractor and the Fluor Fernald Contract Administrator to agree that the technical direction is within the scope of the contract, or failure to agree upon the contract action to be taken with respect thereto shall be subject to the Fluor Fernald Contract Clause entitled "**Disputes.**"

H.3-H.7 RESERVED.

H.8 ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of Fluor Fernald.
- (b) Fluor Fernald reserves the right to direct the Contractor to assign to Fluor Fernald, the Government or another Contractor any subcontract awarded under this Contract.
- (c) Reserved.

H.9-H.11 RESERVED.

H.12 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential, and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or
 - (4) Information which the Contractor can demonstrate was received by it from a third party which did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees not to discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

(d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

(e) The Contractor agrees that no technical data, information made available to the Contractor by the Government, or information first produced in the performance of this contract or any subcontract, shall be disseminated without the prior written approval of the Contracting Officer. This includes technical papers, press releases, etc.

(f) This clause shall flow down to all subcontracts.

H.13-H.20 RESERVED.

H.21 QUALITY ASSURANCE PROGRAM

Fluor Fernald maintains 1) a formal Quality Assurance Program acceptable to the DOE which satisfies the Quality Assurance Requirements of 10 CFR 830 contained in the Standards/Requirements Identification Document (S/RID) and 2) the Sitewide CERCLA Quality Assurance Project Plan (SCQ) acceptable to both DOE and EPA. The Contractor shall comply with such portions of the Quality Assurance Program and the SCQ as are applicable to the contract work as identified in the Statement of Work, specifications, or any other parts of this contract. Any subcontracts issued in support of this contract shall require subcontractors to comply with those requirements.

H.22-H.26 RESERVED.

H.27 PERMITS, APPLICATIONS AND LICENSES

(a) Except as otherwise directed by Fluor Fernald, the Contractor shall procure and execute all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

(b) Reserved.

H.28-H.32 RESERVED.

H.33 LOBBYING RESTRICTION

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.34 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.35-H.40 RESERVED.

H.41 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY

(a) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health, or quality requirements shall be borne by the party that caused the violation (Contractor, subcontractors, etc.). This clause resolves liability for fines and penalties, though the cognizant regulatory authority may assess such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.

(b) Regardless of what party is the named subject (Contractor, Fluor Fernald or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor or subcontractor actions or inactions is the responsibility of the Contractor or subcontractor, as appropriate, and not reimbursable under this contract. Cost of fines and penalties resulting from violations of, or failure of the Contractor or subcontractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable.

H.42 -H.100 RESERVED.

H.101 FLUOR FERNALD, INC. WORKING DAYS

(a) Fluor Fernald's standard working days are Monday through Friday, with every other Friday as an off day. The first off-Friday in 2004 is January 2, 2004. The standard Fluor Fernald work cycle consists of nine (9) workdays with alternate Friday's off. The two-week cycle consists of 9-hour days, Mondays through Thursdays. Each cycle will include eight 9-hour workdays. The first Friday of the cycle will be an 8-hour workday. The first four hours worked on this Friday concludes the first workweek of the cycle, and the time sheet for this week will be completed on this basis. The second four hours of Friday begins the second week in the cycle and will be recorded on the time sheet for that second week. The second Friday of the cycle will be an off day.

HOLIDAYS

New Year's Day	President's Day	Good Friday
Memorial Day	Independence Day	Labor Day
Veteran's Day	Thanksgiving Day	Day after Thanksgiving
Christmas Eve	Christmas Day	

(b) The dates specified above are Fluor Fernald designated holidays. If the off day Friday is a scheduled holiday, the holiday will be observed on the preceding workday. If a holiday falls on a Sunday, Fluor Fernald observes the following Monday as the holiday. Holidays falling on a Saturday will be observed by Fluor Fernald on the preceding Friday. When Christmas Day or Christmas Eve fall on a Saturday or Sunday, Fluor Fernald will be observing on preceding workday(s).

H.102 FOREIGN NATIONALS

(a) The Contractor has the responsibility to identify to the Fluor Fernald Technical Representative any personnel who are Foreign Nationals who will be communicating with Fluor Fernald personnel during the performance of this contract.

(b) Such personnel (whether off or on site) who will be either communicating with or visiting Fluor Fernald personnel (including making deliveries), or be assigned to work at the Fernald site must obtain approval of Fluor Fernald before such communications can take place. A foreign national is defined as a person who is a stateless person or is not a United States national (i.e., an immigrant alien is considered a foreign national). A stateless person is one who is currently without nationality by either the action of a state withdrawing the protection of nationality; by his/her own action in effectively renouncing the nationality previously held or because he/she has never held nationality due to the circumstances of birth.

(c) Each individual must process applications allowing six to eight weeks for processing after submitting the required information. The Contractor should contact Fluor Fernald Access Administration at (513) 648-3985 to obtain the necessary information and forms.

H.103 INDEMNITY

(a) Contractor agrees to defend, indemnify and hold harmless Fluor Fernald, its parent, affiliates, subsidiaries and their officers, directors, employees, agents, and representatives from and against:

(1) Any claim, demand, cause of action, liability, loss or expense arising from Contractor's actual or asserted failure to comply with any of the provisions of this contract;

(2) Any claim, demand, cause of action, liability, loss or expense arising from Contractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any governmental or quasi-governmental body (including, but not limited to, the actual or asserted failure to pay taxes) including such failures by Contractor, its subcontractors or suppliers; and

(3) Any claim, demand, cause of action, liability, loss or expense relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the goods or services provided under this contract, including the acts or omissions of Contractor, its subcontractors or suppliers.

(b) (1) If this contract is one for the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition and excavating connected therewith, then:

(i) Contractor agrees to indemnify and hold harmless Fluor Fernald, its parent, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from personal injury (including death) or property damage, to the extent that such personal injury or property damage is caused by the negligence of Contractor, its subcontractors or suppliers; and

(2) For contracts not included in section (b)(1) above, Contractor agrees to defend, indemnify and hold harmless Fluor Fernald, its parent, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from injury to or death of persons (including employees of Fluor Fernald, Contractor and Contractor's subcontractors) or from damage to or loss of property (including the property of the Government), arising directly or indirectly out of this contract or out of any acts or omissions of Contractor or its subcontractors. The defense and indemnity obligations of Contractor under this section (b)(2) extend to personal injury or property damage caused by Contractor's subcontractors or suppliers, and include claims, demands, causes of action, liability, loss or expense

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arising under non-delegable duties of Fluor Fernald or arising from Contractor's use of equipment, tools or facilities furnished by Fluor Fernald.

(c) Contractor agrees that its indemnity obligations include the duty to reimburse attorneys' fees and expenses incurred by Fluor Fernald for legal action to enforce Contractor's indemnity obligations under this clause.

(d) In the event that any of the indemnity provisions in this clause entitled "Indemnity" are held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable according to any law governing this contract, then such holding shall not affect the remaining provisions, and the remaining indemnity obligations shall be construed to be enforceable to the fullest extent allowed under applicable law.

(e) With respect to claims by employees of Contractor or its subcontractors, the indemnity obligations created by this clause entitled "Indemnity" shall not be limited by the fact of, amount, or types of benefits or compensation payable by or for Contractor, its subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitations of liability or immunity arising from workers' compensation or such other acts or regulations.

(f) Fluor Fernald shall be entitled to retain from payments otherwise due Contractor such amounts as shall reasonably be considered necessary to satisfy any charges, claims, suits or liens for damages that fall within Contractor's indemnity obligations under this clause entitled "Indemnity", until such charges, claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to Fluor Fernald.

(g) Contractor will have no obligation to indemnify Fluor Fernald under the provisions of this clause entitled "Indemnity" to the extent that the claim, demand, cause of action, liability, loss or expense results directly and proximately from the negligence of Fluor Fernald. Solely with respect to any claim for indemnification made by Fluor Fernald against Contractor under any of the provisions of this clause entitled "Indemnity," the Contractor hereby expressly and specifically waives its statutory and constitutional workers' compensation immunity under Ohio Rev. Code § 4123.74 and Section 35, Article II, Ohio Constitution, from suits arising out of employment. Contractor further agrees that, having expressly and specifically waived its statutory and constitutional immunity solely with respect to any claim made by Fluor Fernald against Contractor, the amount of its indemnity obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

H.104 IMPACT OF VOLUNTARY SEPARATION PROGRAMS AT DEPARTMENT OF ENERGY SITES

(a) Former employees of Fluor Fernald or other Contractors performing work under the terms of Department of Energy contracts may be subject to employment limitations if they terminated their employment within the last five years under a Voluntary Separation Program approved by the Department of Energy. It shall be the Contractor's obligation to determine whether any employee proposed to perform work under this contract is subject to any such limitations. In the event that it is subsequently determined that such an employee was/is ineligible, the Contractor shall be liable for any penalties that may be imposed by the Department of Energy, including the disallowance of any costs that may occur, and shall reassign the employee to other work if requested to do so.

(b) If the Contractor wishes to propose use of an employee who is subject to such a restriction, Fluor Fernald will, if requested, assist in coordinating with the Department of Energy to determine whether the restriction can be waived or mitigated.

(c) The Contractor shall insert the provisions of this clause, including this paragraph, in all subcontracts hereunder involving personnel who will perform work under this contract for Fluor Fernald. This requirement does not apply to subcontract work for providing supplies, equipment, materials, commodities, or services for a Department of Energy facility under a fixed price contract or purchase order and whose primary business activities are not in support of such Department of Energy facility.

H.105 -H.200 RESERVED.

H.201 ORDERING

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of releases by the individuals or activities designated in the Schedule. Such orders may be issued from the date of award through September 30, 2005.

(b) All releases are subject to the terms and conditions of this contract. In the event of conflict between a release and this contract, the contract shall control.

(c) If mailed, a release is considered "issued" when Fluor Fernald deposits the order in the mail. Orders may be issued orally, facsimile, or by electronic commerce methods.

(d) Issuance of releases above the minimum order amount in the Schedule shall be at the sole discretion of Fluor Fernald, price and other factors considered.

H.202 ORDER LIMITATIONS

- (a) *Minimum Order Per Release.* When Fluor Fernald requires supplies or services covered by this contract in an amount of less than 160 containers, Fluor Fernald is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) *Maximum Order Quantities.* The Contractor is not obligated to honor--
- (1) Any release for a single item in excess of 1000 containers;
 - (2) Any combination of releases for items in excess of 150% of the estimated quantity in the Schedule; or
- (c) Notwithstanding paragraph (b) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within three work days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, Fluor Fernald may acquire the supplies or services from another source.

H.203 INDEFINITE QUANTITY

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

Delivery or performance shall be made only as authorized by releases issued in accordance with the Ordering clause. The Contractor shall furnish to Fluor Fernald, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." Fluor Fernald shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. Fluor Fernald may issue releases requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any release issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the release. The contract shall govern the Contractor's and Fluor Fernald rights and obligations with respect to that release to the same extent as if the release were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after December 30, 2005.

H.204 EXERCISE OF OPTIONS

An option may be exercised by a unilateral modification to this contract prior to the end of this contract's term. If Fluor Fernald exercises an option, the extended contract shall be considered to include all other terms and conditions of the contract including this option provision.

H.205 NEW MATERIAL

Unless this contract specified otherwise, the Contractor represents that the supplies and components, including any former Government property identified under the Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property Clause of this contract, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in Fluor Fernald's and the Government's interest, the Contractor shall so notify Fluor Fernald in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to Fluor Fernald if Fluor Fernald authorized the use of used or reconditioned supplies or components.

H.206 DOE NUCLEAR SAFETY REQUIREMENTS & INDEMNIFICATION FOR NUCLEAR SAFETY VIOLATIONS

- (a) The Contractor shall comply with all applicable DOE Nuclear Safety Requirements as defined in 10 C.F.R. 820, *Procedural Rules for DOE Nuclear Activities*, and with provisions that implement these requirements contained elsewhere in this contract.
- (b) The Contractor shall implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with paragraph (a) including the maintenance of complete and accurate records. The Contractor's programs and associated documents are subject to review at all times by Fluor Fernald. All information and documentation submitted by the Contractor pursuant to this clause must be complete and accurate in all material aspects as required by 10 C.F.R. 820.11.
- (c) The Contractor shall promptly identify, document, and correct (subject to Fluor Fernald approval) noncompliances and deviations from the requirements in paragraphs (a) and
- (d) If additional information is needed by Fluor Fernald, the Contractor shall provide such information upon request.

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(e) The Contractor assumes full responsibility and shall indemnify, save harmless, and defend Fluor Fernald, its directors, officers, and employees from any liability under Section 234A (42 U.S.C. 2282a) of the Atomic Energy Act of 1954, as amended, or its Implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorneys fees' and other reasonable costs of defending any action or proceeding instituted under Section 234A or its implementing regulations.

(f) The Contractor shall include the provisions of this clause, including this paragraph (f), in all lower tier subcontracts for any activity that is subject to a DOE Nuclear Safety Requirement.

H.207 KEY PERSONNEL

The personnel specified below are considered to be essential to the work being performed and the contractor shall notify the Fluor Fernald Contract Administrator reasonable in advance of any proposed change to the key personnel identified. The contract shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Fluor Fernald Contract Administrator. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

Title: Project Manager
 Quality Assurance Manager

H.208 SUSPECT/COUNTERFEIT PARTS

Fastener Quality Act of 1990 - The Fastener Quality Act of 1990 is applicable to all work performed under this Contract. Counterfeit or suspect fasteners shall not be provided or incorporated as part of this Contract. The Contractor shall provide written certification of compliance with this requirement and shall comply with all record keeping laws of the Act. Written certification of compliance will be required upon completion of the project and shall be submitted to Fluor Fernald in accordance with the instructions for technical submittals in Section G.2 entitled "Correspondence Procedures" herein.

It shall be the Contractor's responsibility to assure that counterfeit/suspect fasteners are not used in equipment provided by the Contractor in the performance of the Contract.

REFURBISHED MOLDED-CASE CIRCUIT BREAKERS

Refurbished molded-case circuit breakers shall not be accepted for use in the performance of this Contract and will not be accepted at the FCP site. Only molded-case circuit breakers meeting the standards of and approved by the Underwriters Laboratory (UL) will be used.

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Section J, Attachment J.4 Environment, Safety and Health Bulletin, DOE/EH-0266, Issue No. 92-4, dated August 1992 "DOE Quality Alert", provides information regarding the above. The "Suspect/Counterfeit Parts," Figure 1 to the DOE Bulletin DOE/EH-0266 is provided for the Contractor's use in identifying suspect/counterfeit parts.

H.209 PAYMENTS [As derived from FAR 52-232-1 (APR 1984)]

Fluor Fernald shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by Fluor Fernald if-

(a) The amount due on the deliveries warrants it; or (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

H.210 MATERIAL AND WORKMANSHIP [As derived from FAR 52-236-5 (APR 1984)]

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

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

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

SECTION J
ATTACHMENTS

1. General Shipping Instructions, 1 Page
2. Drawings, C-065-166031-002, 2 Pages
3. Fabrication Specification, ES-C-020, 32 Pages
4. Environment, Safety & Health Bulletin, DOE/EH-0266, Issue No. 92-4, dated August 1992, DOE Quality Alert, 9 Pages
5. Small Business Subcontracting Plan, 4 Pages

GENERAL SHIPPING INSTRUCTIONS

COMMON TO ALL SHIPMENTS:

- Ship material to: U.S. DOE, c/o Fluor Fernald, Inc., 7400 Willey Road, Hamilton, OH, 45013.
- Send freight invoice to: U.S. DOE, c/o Fluor Fernald, P.O. Box 538704, Cincinnati, OH, 45253, MS42.
- Questions should be referred to Fluor Fernald Shipping & Packaging Services, 648-5025 or 648-5018.
- Fluor Fernald does not pay freight insurance.

GENERAL RECEIVING HOURS

- Container Shipments may arrive Monday through Sunday between 7:00 a.m. and 2:00 p.m. local time.
- Questions may be directed to Receiving at 513-648-5021.

THE FOLLOWING INFORMATION APPLIES TO F.O.B. ORIGIN, FREIGHT COLLECT SHIPMENTS:

Shipping documents (Bill of Lading) must show the appropriate tender number, the name of the recipient, the contract/purchase order/credit card number, and contain the following statement: **Transportation hereunder is for the U.S. Government, Department of Energy, and the actual total transportation charges paid to the carrier by the consignor or consignee are to be reimbursed by the Government, pursuant to cost reimbursable Contract No. DE-AC24-01OH20115. This may be confirmed by contacting the DOE representative at 513-648-3145.**

SHIPPING GUIDE FOR F.O.B. ORIGIN FREIGHT COLLECT SHIPMENTS

WEIGHT	<u>NEXT DAY DELIVERY REQUIRED</u>	<u>NEXT DAY DELIVERY NOT REQUIRED</u>
Under 100 lbs.	FedEx Collect Account No. 1615-0490-4 (air shipments)	FedEx Ground Collect, Tender No. 178 or UPS, Account No. 484-233
100 lbs. to 9,999 lbs. (Less than truckload shipments)	Not Applicable	Use any of the following less than truckload (LTL) carriers that service your area: 1. Consolidated Freight Ways Tender No. 10096-D Vendor may call Local Agent or 1-800-543-9912 2. ABF Freight Systems, Inc. Tender No. 1560-C Vendor may call Local Agent or 1-501-785-8700 3. Overnite Transportation Co. Tender No. 5305 Vendor may call Local Agent or 1-800-333-7400 4. Roadway Express Tender No. 2914 Sup05 Vendor may call Local Agent or 1-800-762-3929 5. Yellow Freight System Tender No. 1057 Vendor may call Local Agent or 1-800-610-6500
10,000 lbs. or more (truckload shipments)	Not Applicable	Contact Fluor Fernald Shipping at (513) 648-5025 for instructions

THE FOLLOWING INFORMATION APPLIES TO F.O.B. DESTINATION SHIPMENTS:

- Freight charges on vendor invoice shall be separately identified and verified by attaching a copy of the original paid freight invoice.
- Shipping documents (Bill of Lading) must show the name of the recipient, and the contract/purchase order/credit card number.

SECTION K

1. Representations, Certifications, and Other Statements of Bidders/Offerors
2. Agreement to Contract Terms and Conditions/Contract Clauses
3. Organizational Conflicts of Interest Representation or Disclosure Statement

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS/OFFERORS

K.1 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (*Apr 1991*).

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.2 TAXPAYER IDENTIFICATION (*Oct 1998*).

(a) *Definitions.*

"Common parent," as used in this provision, means that corporate entity that owns

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or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All Offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

_____ TIN: _____.

_____ TIN has been applied for.

_____ TIN is not required because:

_____ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

_____ Offeror is an agency or instrumentality of a foreign government;

_____ Offeror is an agency or instrumentality of the Federal Government.

(e) *Type of organization.*

_____ Sole proprietorship;

_____ Partnership;

_____ Corporate entity (not tax-exempt);

_____ Corporate entity (tax-exempt);

_____ Government entity (Federal, State, or local);

_____ Foreign government;

_____ International organization per 26 CFR 1.6049-4;

_____ Other _____.

(f) *Common parent.*

_____ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

_____ Name and TIN of common parent:
Name _____
TIN _____

K.3 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (May 1999).

(a) *Definition.* "Women-owned business concern," as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the Offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The Offeror represents that it is a women-owned business concern.

K.4 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (Mar 1996)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has not within a three-year period preceding this

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offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE (*Jun 1997*).

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

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(b) As an attachment to these Representations, Certifications and Other Statements or Bidders/Offerors, the Offeror shall provide the statement described in paragraph (c) of this provision as a part of its proposal.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the Offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the Offeror to provide the required statement may result in the Offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

K.6 SMALL BUSINESS PROGRAM REPRESENTATIONS (Oct 2000).

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 332439.

(2) The small business size standard is 500 employees.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

FLUOR FERNALD, INC.

(b) *Representations.*

(1) The Offeror represents as part of its offer that it is, is not a small business concern.

(2) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents as part of its offer that it is, is not a women-owned small business concern.

(4) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(5) [Complete only if the Offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The Offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(c) *Definitions.* As used in this provision--

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

FLUOR FERNALD, INC.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.7 SMALL DISADVANTAGED BUSINESS STATUS (Oct 1999).

(a) *General.* This provision is used to assess an Offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, Small Business Program Representation.

(b) *Representations.*

(1) *General.* The Offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either--

(i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(A) No material change in disadvantaged ownership and control has occurred since its certification;

(B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 24.104(c)(2); and

(C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

(ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2) *For Joint Ventures.* The Offeror represents, as part of its offer, that it is, is not a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The Offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

FLUOR FERNALD, INC.

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall--

- (1) Be punished by imposition of a fine, imprisonment, or both;
- (2) Be subject to administrative remedies, including suspension and debarment; and
- (3) Be ineligible for participation in programs conducted under the Authority of the Small Business Act.

Alternate I (Oct 1998). As prescribed in 19.307(b), add the following paragraph (b)(3) to the basic provision:

- (3) *Address.* The Offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The Offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the Offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged business concern that is participating in the joint venture.

K.8 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (*Feb 1999*).

The Offeror represents that--

- (a) It has, has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;
- (b) It has, has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.9 AFFIRMATIVE ACTION COMPLIANCE (*Apr 1984*).

The Offeror represents that--

- (a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- (b) It has, has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.10 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (*June 2000*).

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the Offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. Disclosure Statement--Cost Accounting Practices and Certification

Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

- (a) Any Offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the Offeror's proposal under this solicitation unless the Offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the Offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

FLUOR FERNALD, INC.

Offeror

(1) *Certificate of Concurrent Submission of Disclosure Statement.* The Offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor. (Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed: _____

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.* The Offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed: _____

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) *Certificate of Monetary Exemption.* The Offeror hereby certifies that the Offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The Offeror further certifies that if such status changes before an award resulting from this proposal, the Offeror will advise the Contracting Officer immediately.

(4) *Certificate of Interim Exemption.* The Offeror hereby certifies that (i) the

FLUOR FERNALD, INC.

Offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the Offeror is not yet required to submit a Disclosure Statement. The Offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the Offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards--Eligibility for Modified Contract Coverage

If the Offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the Offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause. The Offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the Offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the Offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The Offeror further certifies that if such status changes before an award resulting from this proposal, the Offeror will advise the Contracting Officer immediately.

Caution: An Offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the Offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. Additional Cost Accounting Standards Applicable to Existing Contracts

The Offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

* yes * no

Alternate I (Apr 1996). As prescribed in 30.201-3(b), add the following subparagraph (c)(5) to Part I of the basic provision:

FLUOR FERNALD, INC.

(1) *Certificate of Disclosure Statement Due Date by Educational Institution.* If the Offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the Offeror hereby certifies that (check one and complete):

(i) A Disclosure Statement Filing Due Date of _____ has been established with the cognizant Federal agency.

(ii) The Disclosure Statement will be submitted within the 6-month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

K.11 INSURANCE COVERAGE (*Applicable to work at the FEMP and satellite locations*)

(a) Identify your insurance coverage including applicable deductibles for the following risks: Employer's Liability, Commercial General Liability, Automobile Liability, Contractor's Operations and Professional Services Liability, and any other coverage not required by law. Provide certificates of insurance coverage for all insurance so identified.

(b) By making this certification, the Offeror warrants that it has all insurance coverage required by law and that, if awarded the contract, it will maintain required insurance and that identified as requested above throughout the period of contract performance.

K.12 SIGNATURE/CERTIFICATION

By signing below, the Bidder/Offeror certifies, under penalty of law, that the representations and certifications are accurate, current and complete. The Bidder/Offeror further certifies that it will notify Fluor Fernald, Inc., of any changes to these representation and certifications.

Signature of Officer of Employee Responsible for the Bid/Offer

Date of Execution

Typed Name and Title of the Officer or Employee Responsible for the Bid/Offer

Name of Organization

Address of Organization

F04PB13013 _____
SOLICITATION NUMBER

FLUOR FERNALD

AGREEMENT TO CONTRACT TERMS AND CONDITIONS/CONTRACT CLAUSES

- G This proposal in response to RFP No. _____ is based on full acceptance of the Contract Clauses, Section I. **(This block must be checked.** Fluor Fernald will not entertain any exceptions to the Section I, Contract Clauses.)
- G All exceptions to provisions other than the Contract Clauses of this RFP are delineated and **attached to this form.**

Unless noted on the attachment, all other terms and conditions are accepted by the undersigned.

(Signature)

(Date)

(Company)

SECTION L

INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS/OFFERORS

L.1 FORMAL COMMUNICATIONS

Formal communications such as Requests for Clarification and/or information concerning this solicitation should be submitted in writing to the address below:

Fluor Fernald, Inc.
P.O. Box 538704
Cincinnati, OH 45253-8704
Attn.: William Hensley, MS-44-O-S

Internet: william.hensley@fernald.gov

L.2 EXPLANATION TO PROSPECTIVE OFFERORS

Any explanation desired by prospective Offerors regarding the meaning or interpretation of the solicitation, specifications, etc. shall be transmitted in writing. Any information concerning this solicitation or request for clarification will not be provided in response to telephone calls as oral explanations or instructions given to an Offeror prior to the award of the proposed contract will not be binding. Fluor Fernald will address requests received by facsimile that are sent to the attention of William Hensley at (513) 648-3912. All requests must be confirmed in writing to the above address. **However, because of mailing time, no written or facsimile inquiries will be answered when requests are received within ten (10) calendar days of the date for submission of offers as specified in this solicitation.** The format of the questions shall follow the sequential numbering of this solicitation's sections and paragraphs and shall state the major paragraph heading.

L.3 AMENDMENTS TO SOLICITATIONS

If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendments.

L.4 PERIOD OF ACCEPTANCE

Proposals in response to this solicitation will be valid for the number of calendar days specified on the solicitation cover sheet (unless a different period is proposed by the Offeror).

L.5 NAICS CODE AND SMALL BUSINESS SIZE STANDARD

- A. The North American Industry Classification System (NAICS) for this acquisition is 332439.
- B. The small business size standard is in accordance with Federal Acquisition Regulation (FAR) Part 19.

- C. The small business size standard for a concern which submits an offer in its own name, **other than on a construction or service contract**, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

L.6 PREPARATION OF OFFERS

- A. Offerors are expected to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the Offeror's risk.
- B. Each Offeror shall furnish the information required by the solicitation. The Offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. The person signing the offer must initial erasures or other changes. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to Fluor Fernald.
- C. For each item offered, Offerors shall (1) show the unit price/cost, including, all services required by the RFP pertinent to the item priced and (2) enter the extended price for the quantity of each item offered. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- D. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- E. Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.
- F. Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

L.7 PROPOSAL FORMAT AND CONTENTS

- A. Proposals shall include all data and information required by this solicitation. Offerors shall submit one (1) proposal meeting the requirements of this solicitation.
- B. Offerors shall provide a full written explanation of all exceptions taken to the specifications or data requirements, if any, by referencing the appropriate paragraph or exhibit line item number, as appropriate. Any exceptions shall be attached to **Section K, Attachment K-2, Agreement to Contract Terms and Conditions/Contract Clauses**, and submitted with the Offeror's proposal. If no exceptions are taken, the Offeror shall so state on said Attachment K-2.

L.8 FINANCIAL STATEMENTS

The Offeror shall furnish Fluor Fernald with a current certified statement of the Offeror's financial condition and additional data such as a Dun & Bradstreet report, their latest 10K report, a bank reference with a point of contact and any other information Fluor Fernald may request with respect to the Offeror's operations. Fluor Fernald will use this information to determine the Offeror's financial responsibility and ability to perform under the contract. Failure of an Offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

L.9 REQUIRED PRICE PROPOSAL SUBMITTALS

- A. Completed Fluor Fernald **Solicitation, Offer and Award** Form.
- B. Completed **Section B** – Prices are considered firm and fixed. The Offeror may submit a separate Pricing Table as part of their proposal that provides for volume discounts against releases above the guaranteed minimum provided in the Contract. The tables should breakdown the estimated quantities and show the discounts that would apply at pre-determined order quantities.
- C. Completed Fluor Fernald Representations, Certifications and Other Statements of Bidders/Offerors (**Section K, Attachment K-1**).
- D. Completed Agreement to Contract Terms and Conditions/Contract Clauses (**Section K, Attachment K-2**, with any exceptions detailed and attached.)
- E. Small Business Subcontracting Plan in accordance with Section I, Clause I.24. Attachment J.5.
- F. Certified Statement of Offerors Financial Condition as required by Section L.8.
- G. Required Insurance Certificate in accordance with Section H.28.

L.10 SUBMISSION OF PROPOSALS

Proposal Due Date: An original and eight (8) copies of the Technical and Price Proposals shall be received on or before **December XX, 2003**, at 3:00 p.m., Cincinnati time. Offers and modifications thereof shall be submitted in sealed envelopes or packages. A representative of the Offeror authorized to legally bind the company must sign the original proposal. Envelopes or packages containing proposals shall be marked with the solicitation number, date and hour specified for receipt of offers, and the name and address of the Offeror on the outer cover in the lower right-hand corner.

- Proposals should be addressed as follows:

Fluor Fernald, Inc.
P.O. Box 538704
Cincinnati, Ohio 45253-8704
Attn.: William Hensley, MS 44-0-S

- Proposals submitted by express mail services shall be addressed as follows:

Fluor Fernald, Inc.
7400 Willey Road
Hamilton, Ohio 45013-9402
Attn: William Hensley, MS44-0-S

L.11 FAILURE TO SUBMIT AN OFFER

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, those firms **not** responding should advise Fluor Fernald by letter or postcard why no offer is being submitted and whether the firm wishes to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify Fluor Fernald that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.12 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF PROPOSALS

- A. Except when determined to be in the best interest of Fluor Fernald and the Government, Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.
- B. Notwithstanding Paragraph A above, a late modification of an otherwise successful proposal, that makes its terms more favorable to Fluor Fernald, will be considered at any time it is received before award and may be accepted.
- C. Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be also withdrawn via facsimile if the request is received at any time before award. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

L.13 OPENING OF PROPOSALS

There will be no public opening of the proposals. Offerors will be advised of award as soon as possible after source selection has been made and the consent of the Department of Energy (DOE) has been received, if required.

L.14 PROTESTS

The General Accounting Office (GAO) will not consider a protest of the award or proposed award of an agency contract except where the agency has requested in writing that the contract protest be decided by the GAO. Further, the DOE has advised Fluor Fernald that the DOE will not act upon any contract protest for the award resulting from the affected solicitation. Any complaints regarding award of this solicitation should be formally filed in writing with the cognizant Fluor Fernald Contract Administrator.

L.15 DISCLAIMER

This solicitation does not commit the United States Government or Fluor Fernald to pay for any costs incurred in the preparation and submission of a proposal or for any other costs incurred prior to the execution of the contract. This solicitation shall not be construed in any manner to be an obligation on the part of the United States Government or Fluor Fernald to enter into a contract or any other arrangement with the Offeror.

L.16 SPECIAL NOTES

Sections L and M will be physically removed from any resultant award.

L.17 FINAL REVISED PROPOSALS

- A. Offerors are cautioned to review carefully all terms and conditions and specifications of this solicitation prior to the submission of proposals. Fluor Fernald may award this solicitation without discussion of proposals received.
- B. Discussions may be held at the sole discretion of Fluor Fernald. A complete understanding of technical requirements and all other terms and conditions of the proposed contract should exist between the Offeror and Fluor Fernald at the conclusion of any such discussions. Final revised proposals will be requested upon the completion of discussions, if held.
- C. Offerors may not submit any new or revised terms or conditions in their final revised proposals that have not been fully disclosed, discussed, and understood during discussions. Any such revisions must be substantiated and must be able to be traced back to the original proposal. Any revisions or non-concurrence to negotiated agreement terms and conditions submitted in the revised proposal be a basis for the rejection of the Offeror's final revised proposal.

L.18 TEAMING PARTNERS OF FLUOR FERNALD

Offerors are cautioned that if your company is a Parent, a Division, an Affiliate of Fluor, Inc. or any of the following companies that are teaming partners of Fluor Fernald under its prime contract DE-AC24-01OH20115 with the Department of Energy, you are not eligible for award:

Jacobs Engineering Group Inc.
Duratek Federal Services, Inc.
Nuclear Fuel Services, Inc.

L.19 COST OR PRICING DATA

- A. Although not presently required by this solicitation, it may necessary that an Offeror's proposal be fully supported by cost and pricing data in accordance with Public Law 87-653, "Truth in Negotiations Act." If required, failure to provide cost and pricing information in support of the proposal as set forth herein may be sufficient cause to reject an Offeror's proposal.
- B. In the event that any cost data or supporting information described herein is deemed to be proprietary, or otherwise not available to Fluor Fernald, Offerors shall provide the location of pertinent data available for assist audit by the government.

L.20 SMALL BUSINESS SUBCONTRACTING PLAN

If the Offeror is other than a small business as defined in Item No. L.5 above, a subcontracting plan that separately addresses subcontracting with small and small disadvantaged businesses is required with proposals with proposed price exceeding \$500,000. This plan shall include the elements as defined in the Fluor Fernald General Provision entitled "**Small Business Subcontracting Plan.**" This plan will be attached to and made a part of the proposed contract. Failure to submit and negotiate the subcontracting plan may make the Offeror ineligible for award.

L.21 TECHNICAL/MANAGEMENT PROPOSAL

- A. General. The technical proposal should be specific, detailed, and complete to demonstrate clearly and fully that the prospective Offeror has a thorough understanding of the requirements. The technical proposal must enable Fluor Fernald technical personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal meets the requirements of **Section C, Statement of Work**. No information regarding pricing shall be provided within the technical proposal.
- B. Requirements. The technical proposal shall follow the format outline and contain, as a minimum, the information and submittals in **Section L, Attachment L-1**. This information will be evaluated in accordance with the criteria in **Section M**.

L.22 SUBMISSION OF CERTIFIED COST OR PRICING DATA

- A. Offerors are not required to submit certified cost or pricing data as this solicitation is expected to be awarded based on adequate price competition. After receipt of proposals, the Fluor Fernald Contract Administrator may determine that adequate price competition does not exist and that certified cost or pricing data is required.
- B. If it is determined that adequate price competition does not exist, the Offeror shall provide current, complete and accurate cost or pricing data in accordance with the instructions of Table 15-2 of Federal Acquisition Regulation (FAR) 15.408 as required by FAR 15.403-4, unless an exemption is claimed and accepted by Fluor Fernald in accordance with FAR 15.403-1(b). This data shall be provided within five (5) days after request. The Offeror may request an extension,

but any extension must be agreed to, in writing, by the Fluor Fernald Contract Administrator. A Certificate of Current Cost or Pricing, as specified in FAR 15.406-2, will be required of the successful Offeror prior to contract award.

L.23 FACSIMILE PROPOSALS

Facsimile transmissions of proposals are **not** authorized for this solicitation.

L.24 TECHNICAL/PERFORMANCE ASSESSMENT

Representatives from, but not limited to, Fluor Fernald Quality Assurance and Fluor Fernald Acquisitions may conduct a Technical/Performance Assessment to verify the Offeror's compliance with this solicitation's requirements. Such an assessment may include, but will not necessarily be limited to, an inspection of capacity, capability, procedures, management control systems (financial, quality assurance, and schedule), and material storage and handling procedures. This assessment could be conducted at the Offeror's manufacturing facility or conducted as a review of appropriate documents, past performance, previous Fluor Fernald surveys, surveys performed by other Department of Energy (DOE) sites, etc. The method of assessing is at the discretion of Fluor Fernald. The conduct of such an evaluation does not constitute a commitment by Fluor Fernald to award any contract to the Offeror. Failure by the Offeror to successfully demonstrate its ability to comply with the requirements of this solicitation may result in the Offeror being considered non-responsible and removed from further consideration.

L.25 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their proposals data that they do not want disclosed to the public for any purpose or used by Fluor Fernald except for evaluation purposes, shall:

A. Mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside Fluor Fernald and the Government and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of – or in connection with – the submission of this data, Fluor Fernald and the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Fluor Fernald or the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in 50 sheets; and

B. Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

L.26 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW

Should the estimated total value of this contract exceed \$10 million or more, an award will not be made under this solicitation unless the Offeror and each of its known first-tier contractors (to whom it intends to award a contract of \$10 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

L.27 ORAL PRESENTATIONS

Oral presentations may be required from the Offerors determined to be in the competitive range. The presentations may be held at Fluor Fernald or the Offerors facility. The Offerors will be notified of the time and place for such presentation.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 INTRODUCTION

The evaluation of proposals and the selection of source(s) for award will be in accordance with the criteria set forth below.

M.2 BASIS FOR AWARD - BEST VALUE

Proposals will be evaluated and award made to the responsible offeror(s) whose proposal(s) is(are) evaluated as offering the “best value” to Fluor Fernald and the Government, price and other factors considered. Although price is an important factor, the combination of technical, schedule, programmatic, and past performance evaluation criteria identified below **are a slightly greater factor than price.** Fluor Fernald will perform a trade-off analysis between price and the other criteria in determining which proposal offers the best value.

- A. Selection will be made on the basis of an integrated assessment of each Offeror's proposal received in response to this solicitation and on review of each Offeror's capabilities by Fluor Fernald. Fluor Fernald intends to make multiple awards resulting from this solicitation to the responsible Offeror(s) whose proposal represents the best value after evaluation in accordance with the factors and sub-factors identified in this solicitation. However, Fluor Fernald will not make an award at a significantly higher overall cost to Fluor Fernald to achieve slightly superior technical features.
- B. The Silos 1 and 2 Metal Shipping Containers proposals will be evaluated as follows: Technical Submittal, Past Performance Submittal, Schedule Submittal, Program Submittal, and Price. The scoring and weighting are as follows: Technical Submittal (30%), Past Performance Submittal (30%), Schedule Submittal (20%), and Program Submittal (20%). Price will be evaluated but not scored.

Criterion 1: Technical Submittal Evaluation (30%)

Fluor Fernald will evaluate the Offeror's proposed approach to fabrication and delivery with respect to:

- Proposed Fabrication Plan, specifically fabrication process description, capability and capacity of the fabrication facility, and the staffing plan for welders and weld inspectors
- Proposed Transportation Plan, specifically the completeness and feasibility of the plan for just-in-time delivery of containers and the capability of the offeror to meet weekly delivery requirements

- Technical and Management Capability, specifically the welding, weld inspection, and key personnel who will be crucial in fabricating and coordinating delivery of the containers

Criterion 2: Past Performance Submittal Evaluation (30%)

Fluor Fernald will assess the past performance of the Offeror with respect to:

- Performance on similar contracts – type, size, and quantity of containers fabricated
- Performance of technical tasks on the previous projects as applicable to the proposed scope of work
- Original project execution schedule and actual performance schedule.
- Contracts with similar periods of performance
- Fabricating containers on a regular schedule
- Delivering containers on a regular schedule
- Completing QA Documentation Packages on a regular schedule
- Consistently submitting complete QA Documentation Packages on schedule
- Other government contracts

Criterion 3: Schedule Submittal Evaluation (20%)

Fluor Fernald will evaluate the Offeror's proposed tooling, fabrication, and delivery dates for the first quantity of containers ordered with respect to:

- Capacity of the Offeror to fabricate and deliver the first 120 containers to the FCP between August 23, 2004 and September 6, 2004.
- Capacity of the Offeror to fabricate and deliver the remaining quantity of containers in the first release.
- Capability of the Offeror to complete and submit necessary QA documentation to support timely deliveries of the initial quantity of containers ordered.
- Capacity of the Offeror to fabricate and deliver 70 containers a week until the initial quantity of containers ordered has been met.

Criterion 4: Program Submittal Evaluation (20%)

Fluor Fernald will evaluate program submittal elements with respect to:

- Adequacy of existing Quality Assurance Program.
- Adequacy of existing welding procedure specifications, weld repair procedures, welding inspection procedures, and testing procedures.

Price Proposal Evaluation

Fluor Fernald will evaluate the Offeror's price proposal with respect to:

- Reasonableness of pricing
- Lowest price

C. Multiple contracts may be awarded at the sole discretion of Fluor Fernald.

M.3 EVALUATION OF OPTIONS

Except when it is determined not to be in Fluor Fernald's and the Government's best interests, the Fluor Fernald will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of the option quantities will not obligate Fluor Fernald, in any way, to exercise any option. Fluor Fernald may reject an offer as nonresponsive if it is materially unbalanced as to the prices for the base requirement and the option requirements. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

M.4 ALTERNATE AWARD PROCEDURE

Subsequent to the completion of the initial evaluation of proposals, Fluor Fernald may elect to open negotiations with the best-evaluated Offeror(s) with the intent of definitizing a contract with that Offeror. If a mutually agreeable contract cannot be definitized as to technical, price, and all other terms and conditions, Fluor Fernald may then open negotiations with the next highest-evaluated Offeror with the intent of definitizing a contract with that Offeror.