

GENERAL TERMS AND CONDITIONS
(8-03)

1. INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. To gain access to the site, the bidder or its representative must be a citizen of the United States.

2. CONDITIONS AND LOCATION OF PROPERTY

Unless otherwise provided in the Invitation, all property listed therein is offered for sale "as is" and "where is" and without recourse against Fluor Fernald, Inc. (Fluor Fernald) or the Government. The description is based on the best available information and unless otherwise provided in the Invitation, Fluor Fernald or the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose. Except as provided in Conditions No.12 and 14 or other special conditions of the Invitation, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

3. CONSIDERATION OF BIDS.

(a) Unless otherwise provided in the Invitation, telegraphic or telephonic bids will not be considered.

(b) The Bidder agrees that its bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (60 calendar days if no period is specified by the Fluor Fernald or by the Bidder), and that during such period its will remain firm and irrevocable. Fluor Fernald, reserves the right to reject any or all bids, including bids under which a Bidder would take unfair advantage of the Fluor Fernald, the Government, or other Bidders, to waive any technical defects in bids, and unless otherwise specified by Fluor Fernald, or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of Fluor Fernald, or the Government. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed items must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item.

4. BID DEPOSITS AND PAYMENTS

When required by the Invitation, bid deposits and payments shall be in U.S. currency or any form of credit instruments other than promissory notes, made payable on demand in U.S. currency. When permitted, uncertified personal or business checks must be first party instruments. Bids submitted after the effective date specified in the written notification referred to which are not accompanied by the property bid deposit will be summarily rejected. In the event of any default by the Bidder or any failure by the Bidder to comply with the terms and conditions of the contract, any deposit made by the Bidder may be applied by Fluor Fernald or the Government to any loss, cost and expenses occasioned to Fluor Fernald, or the Government thereby, including any loss, cost and expenses incurred in selling the property and including any difference between the amount specified in the bid and the amount for which Fluor Fernald, or the Government may sell the property, if the latter amount be less than the former. Deposits accompanying bids which are not accepted will be returned. Deposits of successful

Bidders may be applied against the contract price, and upon completion of the contract any excess of the deposit will be returned to the Bidder.

5. BID PRICE DETERMINATION

When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.

(a) In the event the Bidder inserts a total price on the item but fails to insert a unit price, Fluor Fernald will determine the unit price by dividing the total price by the quantity of the item set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award, and all phases of contract administration.

(b) When bids are solicited on a "lot" basis, Bidders should submit a single total price on the bid sheet.

6. PAYMENT

The Purchaser agrees to pay for property awarded to him/her in accordance with the prices quoted in his/her bid and by the terms and time indicated in the Invitation. Checks must be made payable to Fluor Fernald, Inc. Unless otherwise specified by Fluor Fernald, payment of the full purchase price, subject to any adjustment for variation in quantity or weight pursuant to Article 12, must be made prior to the date specified for removal and prior to delivery of any property. If any such adjustment is necessary, then payment must be completed immediately subsequent to adjustment unless otherwise specified by the Fluor Fernald. If the successful bidder fails to make full and final payment as herein provided, Fluor Fernald, and the Government reserve the right, upon written notice to the successful Bidder, to sell or otherwise dispose of any or all such property in Fluor Fernald possession and to charge the loss, if any, to the account of the defaulting Bidder. The original Purchaser will in no way be released from full compliance with the terms and conditions of the sale by its resale of the property.

7. TITLE, RISK OF LOSS, AND FLUOR FERNALD, INC. OR GOVERNMENT'S LIABILITY

Unless otherwise provided in the Invitation, title to the property sold hereunder shall vest in the Purchaser only upon full payment being made to Fluor Fernald, (in the case of a personal check or company check after such check is honored) except that if the contract provided for loading to be performed by Fluor Fernald, the title shall not rest in the Purchaser until both the loading and payment are completed. Fluor Fernald shall furnish a certificate of release, Standard Form 97, for each piece of equipment requiring a certificate of title by a state. After mailing notice of award and before delivery of property to the Purchaser, Fluor Fernald will be responsible for the care and protection of the property and any loss, damage, or destruction occurring during such period will be adjusted by Fluor Fernald, by appropriate changes in the contract price, to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. At the discretion of Fluor Fernald, the adjustment may consist of rescission. After delivery of property to the Purchaser, and before the date specified for removal, Fluor Fernald's responsibility will be limited to the exercise of reasonable care for the protection of the property. After the date specified for the removal of the property, all risk, loss, damage or destruction from any cause whatsoever shall be borne by the Purchaser. In any case where liability of Fluor Fernald or the Government to the Purchaser has been established, Fluor Fernald's or the Government's shall not, in any event, exceed refund of the purchase price or such portion thereof as Fluor Fernald may have received.

8. DELIVERY, LOADING, AND REMOVAL OF PROPERTY.

(a) Unless otherwise provided in the Invitation, the Purchaser shall be entitled to obtain the property upon full payment therefore with delivery being made only from the exact place where the property is located within the installation. The Purchaser must make all arrangements necessary for packing, removal, and transportation of property. Fluor Fernald will not act as liaison in any fashion between the Purchaser and carrier, nor will Fluor Fernald recommend a specific common carrier. Loading will not be performed on Saturdays, Sundays, Federal holidays, or any date that the facility where the property is located is closed. Where it is provided that Fluor Fernald will load, they will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement of the Purchaser's conveyance shall be as determined by Fluor Fernald. Unless otherwise provided in the Invitation, Fluor Fernald will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyances(s) furnished by the Purchaser.

(b) Where it is provided in the Invitation that Fluor Fernald will not load or that the Purchaser will load, the Purchaser will make all arrangements and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at its expense within the period of time allowed in the Invitation. If Fluor Fernald determines that the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by Fluor Fernald pursuant to this clause Fluor Fernald without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse Fluor Fernald for any damage to Government property caused during the removal operations by the Purchaser or its authorized representative.

(c) Items purchased under the Invitation will be released only to the Purchaser or its authorized representative. The authorized representative must furnish authorization from the Purchaser to the Custodian of the property location before any delivery of release will be made. When property is described as being boxed, packed, crated, skidded, or in containers, Fluor Fernald does not warrant that the property, as packaged, is suitable for shipment.

(d) Segregation, culling, or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by Fluor Fernald.

9. DEFAULT

If, after the award, the Purchaser breaches the contract by failure to make payment within the time allowed by the contract as required by Condition No. 6, or by failure to remove the property as required by Condition No. 8, then the Fluor Fernald may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within that period (or such further period as the Fluor Fernald may allow) the Purchaser shall lose all right, title, and interest which he/she might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he/she fails to pay for the property or remove the same within the prescribed period(s) of time, Fluor Fernald shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20 percent

of the purchase price of the item(s) as to which the default has occurred, or (b) \$25: Provided, That in the event of multiple awards of items under a single Invitation for Bids, the amount to be charged, if the minimum charge provided for in (b) above is applicable, shall be determined by the total purchase price reflected in the award documents: Provider further, that the maximum sum which may be recovered by the Fluor Fernald as damages for failure of the purchaser to pay for and remove the property shall be the formula amount. Fluor Fernald shall specifically apprise the purchaser, either in its original notice of default (or in separate subsequent written notice), that upon the expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by Fluor Fernald as liquidated damages. However, if the property was sold on a "per lot" basis and the purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be its obligations, Fluor Fernald, may exercise such rights and may pursue such remedies as are provided by law or under the contract.

10. SETOFF OF REFUNDS

The Bidder or Purchaser agrees that Fluor Fernald may use all or a portion of any bid deposit or refund due him/her to satisfy, in whole or in part, any debts arising out of prior transactions with Fluor Fernald.

11. INTEREST

Notwithstanding any other provision of this contract, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to Fluor Fernald under this contract shall bear simple interest at the rate which has been established by the Contract Disputes Act of 1978 (Public Law 95-563), from the date of first written demand until paid.

12. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT

Unless otherwise provided in the Invitation, when property is sold by a unit other than "weight", Fluor Fernald reserves the right to vary the quantity tendered or delivered to the Purchaser by 10 percent; when the property is sold by "weight", Fluor Fernald reserves the right to vary the weight tendered or delivered to the Purchaser by 25 percent. The purchase price will be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Invitation, no adjustment for such variation will be made where property is sold on a "price for the lot" basis.

13. WEIGHING, SWITCHING, AND SPOTTING

Where weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all expenses of weighing the property, including switching charges incurred. When removal is by truck, weighing shall be under the supervision of Fluor Fernald, and at its option on: (a) Fluor Fernald's scales, (b) certified scales in the vicinity of the location, (c) certified scales in the vicinity of the Purchaser's establishment or (d) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or by other means acceptable to the railroad for freight purposes. Fluor Fernald, approved weighing shall govern payment. Weighing of property on Government scales shall be without charge to the Purchaser.

14. ORAL STATEMENTS AND MODIFICATIONS

Any oral statement or representation by any representative of Fluor Fernald, changing or supplementing the Invitation or contract or any Condition thereof, is unauthorized and

shall confer no right upon the Bidder or Purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on Fluor Fernald unless furnished or agreed to, in writing, by Fluor Fernald.

15. COVENANT AGAINST CONTINGENT FEES

(a) The Purchaser warrants that no person or agency has been employed or retained to solicit to obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, Fluor Fernald shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency", as used in this clause, means an established commercial or selling agency, maintained by a Purchaser for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being to obtain any Government contract or contracts through improper influence.

"Bona fide employee", as used in this clause, means a person, employed by Purchaser and subject to the Purchaser's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain management contracts nor holds out as being able to obtain Government contract or contracts through improper influence.

"Contingent fee", as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Fluor Fernald or Government contract.

"Improper Influence", as used in this clause, means any influence that induces or tends to induce a Fluor Fernald, Inc. employee or Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

16. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

17. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(a) The Purchaser certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Purchaser or competitor relating to

(i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered; any other Purchaser or competitor before bid opening (in the case of a formally advertised solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Purchaser to include any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the Purchaser's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) Has been authorized, in writing, to act as agent for the principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(ii) As an authorized agent, does certify that the principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above, and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

If the Purchaser deletes or modifies subparagraph (a)(2) above, the Purchaser must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

18. CLAIMS LIABILITY

The Bidder or Purchaser agrees to save Fluor Fernald and the Government harmless from any and all actions, claims debts, demands, judgments, liabilities, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including State, local and interstate bodies, in any manner caused by or contributed to by the bidder or Purchaser, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of or subject to the control of the bidder or Purchaser, its agents, servants or employees after the property has been removed from Government control.

19. WITHDRAWAL OF PROPERTY AFTER AWARD

Fluor Fernald reserves the right to withdraw for its use any or all of the property covered by this contract, if a bona fide requirement for the property develops or exists prior to actual removal of the property from Fluor Fernald or it is determined that the property was inadvertently released for sale and it is determined to be in the best interest of Fluor Fernald and the Government to withdraw the property. In the event of a withdrawal under these conditions, the sale as applied to such property is void, and the bidder agrees to promptly return such property that has been received to Fluor Fernald. Fluor Fernald shall be liable only for the refund of the contract price as full and complete compensation for the withdrawn property or such portion of the contract price as it may have received.

20. ASSIGNMENTS OF CONTRACTS

Any contract awarded under the Invitation is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such contract.

21. ELIGIBILITY OF BIDDERS

The Bidder warrants the he/she is not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder; (c) an agent or immediate member of the household of the employee in (b), above. For breach of this warranty, Fluor Fernald shall have the right to annul this contract without liability.

22. PERSONS PROHIBITED FROM OR LIMITED IN BIDDING

If the Bidder is an employee of Fluor Fernald, Inc. the U. S. Department of Energy, or a cost type contractor of the U.S. Department of Energy he hereby represents that he (1) has not participated in Fluor Fernald Inc. determination to dispose of the property; (2) has not participated in the preparation of the property for this sale; (3) has not participated in determining the method of this sale; (4) has not acquired information not otherwise available to the general public regarding usage, condition, quality of value of the property.

23. LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWL OF BIDS

- (a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is and either: (1) It is sent by registered or certified mail not later than the fifth calendar day prior to the date specified of the receipt of bids; or (2) It was sent by mail (e-mail fax, or telegram if authorized) and it is determined by Fluor Fernald, Inc. that the late receipt was due solely to mishandling by Fluor Fernald, Inc. after receipt at our facility.
- (b) Any modification of withdrawal of a bid is subject to the same conditions as in (a), above. A bid may also be withdrawn in person by a Bidder or his authorized representative provided his identity is made known and he signs a receipt of the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids. Telegraphic, faxed, or e-mailed modifications will be considered, but should not reveal the amount of the original or revised bid.
- (c) The only acceptable evidence to establish: (1) The date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U. S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark show a legible date, the, modification, or withdrawal shall be deemed as mailed late. (2)The time of receipt at Fluor Fernald, Inc. installation is the time date-stamp at our facility on the bid wrapper or other documentary evidence of receipt as approved by Fluor Fernald, Inc.
- (d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful bid that make it's terms more favorable to Fluor Fernald or the Government will be considered at any time it is received and may be accepted.

24. REQUIREMENTS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS

It is the Bidder's responsibility to ascertain and comply with all applicable Federal, State, local, and multi-jurisdictional laws, ordinances, and regulations pertaining to the registration, licensing, handling, possession, transportation, transfer, export, processing, manufacture, sale, use of disposal of the property listed in the Invitation. Purchasers or users of this property are not excused from any violation of such laws or regulations because the United States has had any interest in the property at any time.

25. DISPUTES

- (a) All disputes arising under or relating to this contract shall be resolved pursuant to the procedures of this clause. Any claim for the payment of a sum certain or other relief arising under or related to this contract shall be made in writing by the claiming party to the other. Claims shall be subject to a written decision by the party against whom the claim is made within a reasonable time of submission. The purchaser agrees to continue to perform this contract pending final resolution of any claims. The purchaser shall have no right to stop work or otherwise fail to perform its contract in spite of pending claims, and the seller limits its rights to relief to equitable adjustment of the contract price and/or schedule. Negotiated resolution of all claims shall be memorialized in contract

modifications. If a claim cannot be settled through negotiation between the parties, the parties agree to submit the claim to mediation by a third party mediator as agreed to by the parties or upon failure to agree as selected by the American Arbitration Association under its Commercial Mediation Rules. Cost of the mediator and place of mediation shall be borne equally by the parties. If a negotiated settlement cannot be reached through mediation, the parties agree to consider submitting those claims to binding arbitration according to terms and conditions as may be agreed upon by the parties. Fluor Fernald shall not be liable for, and the Purchaser waives any claim or potential claim of the Purchaser, which was not made by the Purchaser in accordance with the provisions of this clause prior to final payment.

(b) Irrespective of the place of performance, this contract will be construed and interpreted according to the Federal law of Government contracts as enunciated and applied by Federal Courts, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. Consistent with that law, interest, if any, awarded pursuant to the provisions of this clause shall be simple interest computed at the rate established by the Secretary of the Treasury as provided in the Contract Disputes Act of 1978 applicable to the period for which interest is awarded. In no case shall interest be awarded for a period commencing earlier than the time a complaint is filed in the court of competent jurisdiction of, if, prior to the time a complaint is filed, arbitration is agreed upon, the date of the arbitration agreement. To the extent the Federal law of Government contracts is not dispositive of any issue arising under or relating to this contract, the law of the state of Ohio shall apply. In the event either party hereto files suit on account of any issue arising under or relating to this contract, each party consents to that action being filed in the court of competent jurisdiction in and for Hamilton County, Ohio.