

SECTION H - SPECIAL CONTRACT REQUIREMENTS

In accordance with a deviation approved by USAID's Procurement Executive, FAR 52.228-7 is modified to read as follows:

H.1. Insurance - Liability to Third Persons (Mar 1996)

(a)(1) Except as provided in paragraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed-
For that portion -

(i) Of the reasonable cost of insurance allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for -

(i) Loss of or damage to property, excluding property owned by the Contractor, but including property owned by third parties in Iraq that is occupied or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor, for purposes of performing this contract; or

(ii) Death or bodily injury; provided, in either case, that such loss, damage, death or injury is proximately caused by exposure, in the course of performing this contract, to any of the following: chemical, biological, radiological, or nuclear weapons, agents, or materials; land or sea mines or similar explosive devices; or unexploded ordnance.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability to USAID, at the time a contingency occurs, of appropriated funds for Iraq that are not already obligated to third parties and that may lawfully be used for this purpose. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of-

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

In addition, the Contractor shall not be reimbursed for criminal fines and penalties (or expenses incidental to such fines and penalties).

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall-

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(h) The Contractor agrees to seek diligently, at least once each month, to obtain insurance against the risks described in paragraph (c)(2) of this clause. The Contractor shall report the results of its efforts to the Cognizant Technical Officer on a monthly basis. Each report shall state the identities of all insurers contacted and the response of each one (including coverage offered, exclusions, liability limits, deductibles, premiums, etc.). Subject to prior written approval of the Contracting Officer, the Contractor agrees to acquire and maintain insurance when available on commercially reasonable terms and conditions. Failure to do so shall render null and void the Government's obligation under paragraph (c)(2) of this clause.

(End of clause)

H.2 52.216-23 EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting

Officer not later on the same date of issue of this contract. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

H.3 52.216-24 LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$34,600,000.00 dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is \$34,600,000.00 dollars.

H.4 52.216-25 CONTRACT DEFINITIZATION (OCT 1997)

(a) A definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this letter contract is:

Shall be within 30 days after the execution date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first.

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) above, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by--

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

H.5 AIDAR 752.225-70 SOURCE, ORIGIN AND NATIONALITY REQUIREMENTS (FEB 1997)

(a) Except as may be specifically approved by the Contracting Officer, all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) which will be financed under this contract with U.S. dollars shall be procured in accordance with the requirements in 22 CFR part 228, "Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID." The authorized source for procurement is Geographic Code 000* unless otherwise specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.

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

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

(c) Restricted goods. The Contractor shall not procure any of the following goods or services without the prior written approval of the Contracting Officer:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items,
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer, and has received payment for such purposes, the Contracting Officer may require the Contractor to refund the entire amount of the purchase.

Note: Geographic Code determination is located in H.8. titled Authorized Geographic Code.

H.6 AIDAR 752.7004 EMERGENCY LOCATOR INFORMATION (JUL 1997)

The Contractor agrees to provide the following information to the Mission Administrative Officer on or before the arrival in the host country of every contract employee or dependent:

(1) The individual's full name, home address, and telephone number.

(2) The name and number of the contract, and whether the individual is an employee or dependent.

(3) The contractor's name, home office address, and telephone number, including any after-hours emergency number(s), and the name of the contractor's home office staff member having administrative responsibility for the contract.

(4) The name, address, and telephone number(s) of each individual's next of kin.

(5) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

H.7 INSURANCE AND SERVICES

(a) Pursuant to AIDAR 752.228-3 Worker's Compensation Insurance (Defense Base Act); USAID's DBA insurance carrier is:

Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312

Points of Contact:
Sara Payne or Diane Fjord
(703) 354-1616

Hours of Operation are: 8 a.m. to 5 p.m. (EST)
Telefax: 703) 354-0370
E-Mail: www.rutherford.com

(b) Pursuant to AIDAR 752.228-70 Medical Evacuation (MEDEVAC) Services, USAID's Medevac service provider is:

Medex Assistance Corporation
P.O. Box 5375
Timonium, MD 21094-5375
Telephone: (410) 453-6300 in Maryland;
or (800) 537-2029 (toll-free)
Telefax: (410) 453-6301

Applicants should request coverage in accordance with USAID Contract No. HNE-Q-00-98-00106-00.

Medevac services costs are allowable as a direct cost.

H.8 AUTHORIZED GEOGRAPHIC CODE

The authorized geographic code for procurement of goods and services under this contract is 899. It is anticipated that Iraq will be designated as an

authorized source. Its inclusion shall be communicated as soon as it is approved.

H.9 NONEXPENDABLE PROPERTY PURCHASES AND INFORMATION TECHNOLOGY RESOURCES

The Contractor is hereby authorized to purchase the following equipment and/or resources: TBD

H.10 LOGISTIC SUPPORT

The Contractor shall be responsible for furnishing all logistic support in the United States and overseas. However, in order to insure compatibility of radios, GPS', communications equipment, security systems and personnel, etc, the Contractor will be allowed obtain quotations through AFCAP. The contacts will be provided at the time of award.

H.11 LANGUAGE REQUIREMENTS

Contractor personnel and/or consultant shall have English and/or National Iraqi Arabic language proficiency to perform technical services.

H.12 PERSONNEL COMPENSATION

(a) Limitations:

(1) Salaries and wages may not exceed the Contractor's established policy and practice, including the Contractor's established pay scale for equivalent classifications of employees, which shall be certified to by the Contractor. Nor may any individual salary or wage, without approval of the Cognizant Contracting Officer, exceed the employee's current salary or wage, or the highest rate of annual salary or wage received during any full year of the immediately preceding three (3) years. For Iraqi personnel, the prevailing local market rates shall apply. Adjustments to the rates due to devaluation of the local currency may be considered. It should be noted that USAID will be providing direct compensation to locally-hired consultants, defined as professionals who had been nominally the employees of the former regime, but who are now unemployed as a result of conflict, through a separate contract. This support is intended to ensure that essential services that were undertaken by the former regime are maintained.

(1) In addition, there is a ceiling on the reimbursable base salary or wage paid to personnel under the contract equivalent to the maximum annual salary rate of the USAID "ES-6" (or the equivalent to the maximum ES-6 salary, if compensation is not calculated on an annual basis), as amended from time to time, unless the Contracting Officer approves a higher amount in accordance with the Agency policy and procedures in ADS 302.5.3, titled "USAID Direct Contracting". On April 14, 2003 the Procurement Executive, Mr. Timothy Beans approved salaries above the agency's maximum ES-06 level as follows:

(b)(6)

(b) (6)

NOTE: All other salary increases are subject to regular agency waiver procedures stated in ADS 302.5.3.

(b) Salaries During Travel

Salaries and wages paid while in travel status will not be reimbursed for a travel period greater than the time required for travel by the most direct and expeditious air route.

(c) Return of Overseas Employees

Salaries and wages paid to an employee serving overseas who is discharged by the Contractor for misconduct, inexcusable non-performance, or security reasons will in no event be reimbursed for a period which extends beyond the time required to return him promptly to his point of origin by the most direct and expeditious air route.

(d) Annual Salary Increases

One annual salary increase may be granted after the employee's completion of each twelve month satisfactory services under the contract or the last date of his/her merit increase whichever comes first. Annual salary increases of any kind exceeding the maximum salary of ES-6 may be granted only with the advance written approval of the Contracting Officer per ADS 302.5.3.

(e) Consultants

No compensation for consultants will be reimbursed unless their use under the contract has advance written approval of the Contracting Officer; and if such provision has been made or approval given, compensation shall not exceed: 1) the highest rate of annual compensation received by the consultant during any full year of the immediately preceding three years or 2) the maximum daily salary rate of ES-6, whichever is less.

(f) Initial Salaries

The initial starting salaries of all employees whose salaries are charged as a direct cost to this contract must be approved, in advance and in writing, by the Contracting Officer. (Any initial starting salaries included in the contractor's best and final and accepted during negotiations, are deemed approved upon contract execution).

Note: The Contractor must retain any approvals issued, pursuant to sections (a) through (f) above for audit purposes. Approvals issued, pursuant to the above must be within the terms of this contract, and shall not serve to increase the total estimated cost or the obligated amount of this contract, whichever is less (see Part I, Section B.3 of this contract).

(g) Work Week

(1) Non-overseas Employees.

The length of the contractor's U.S., non-overseas employees workday shall be in accordance with the contractor's established policies and practices and shall not be less than 8 hours per day and 40 hours per week.

(2) Overseas Employee

The work week for the Contractor's overseas employees shall not be less than 40 hours and shall be scheduled to coincide with the work week for those employees of the USAID Mission and the Cooperation Country associated with the work of this contract.

(h) Definitions

As used in this contract, the terms "salaries" and "wages" mean the periodic remuneration received for professional or technical personal services rendered. Unless the contract states otherwise, these terms do not include any other elements of personal compensation described in the cost principle in FAR 31.205-6 "Compensation for Personal Services," such as (but not limited to) the differentials or allowances defined in the clause of this contract entitled "Differentials and Allowances" (AIDAR 752.7028). The term "compensation" is defined in FAR 31.205-6(a) and includes fees and honoraria related to the personal services provided under this contract, but excludes earnings from sources other than the individual's professional or technical work, overhead, or other charges.

H.13. SUBCONTRACTING PLAN AND THE SF 294 - SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS AND SF 295 - SUMMARY CONTRACTING REPORT

The Contractor's subcontracting plan dated is hereby incorporated as a material part of this contract.

In accordance with FAR 52.219-9, SF 294 and SF 295 should be forwarded to the following address:

U.S. Agency for International Development
Office of Small and Disadvantaged Business
Utilization
Room 7.08 RRB
Washington, D.C. 20523

H.14. EXECUTIVE ORDER ON TERRORISM FINANCING

The Contractor/Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the contractor/recipient to ensure compliance with these

Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this contract/agreement.

H.15 SECURITY REQUIREMENTS

(a) This contract may involve classified performance in accordance with Executive Order 12829, The National Industrial Security Program, USAID's ADS Chapter 567 "Classified Contract Security and Contractor Personnel Security Program" and, FAR Subpart 4.4 "Safeguarding Classified Information Within Industry". Consequently, this contract incorporates the minimum provisions needed to comply with the National Industrial Security Program (NISP) and ADS 567, as summarized in paragraphs (b) through (g) below. The requiring office for this contract must complete a DD 254, have it cleared by the Office of Security (SEC), and include it with the Statement of Work for the classified contract. A blank copy of the DD 254 is attached in Section J. Questions pertaining to the DD 254 are to be directed to the Office of Security.

(b) In order to be considered for this classified contract, the contractor must obtain and maintain a "Facility Clearance" at the level specified on the accompanying Contract Security Classification Specification, DD Form 254. If after award of this contract the contractor fails to obtain and maintain a facility clearance at the level identified on the DD Form 254 this contract will be terminated in accordance with the applicable clauses as set forth in the FAR. Any requirement for a "Top Secret facility clearance must be justified and approved by the Office of Security prior to the issuance of this contract at this level and before a company is sponsored for the required investigation by the Defense Security Service. (Note: The time necessary to process an un-cleared company for a facility clearance may delay performance). USAID's designated CTO is responsible for coordinating and identifying specific aspect of the contract that will require access to National Security Information and ensuring the selected company/contractors have the appropriate security clearance (Facility and Personnel) to perform on this contract. In the event the prime selects an un-cleared sub-contractor to work that requires access to National Security Information (Confidential, Secret or Top Secret) the prime must take action in accordance with the National Industrial Security Program Operating Manual, E.O. 12829 to sponsor it's sub-contractor for a Facility Clearance. Refer to the Attached DD Form 254, Contract Security Classification Specification for specific security guidance. The CTO is responsible for managing the clearance requirements for this contract

At the time of award, the contractor does [X] does not [] have a Secret level facility clearance.

(c) If DSS grants an interim clearance but then subsequently revokes the interim clearance after contract award and denies a final clearance, the contract may be terminated, depending on the reasons DSS denied the clearance.

(d) Employees of the Contractor working under this contract and requiring access to classified national security information and/or to areas under the control of USAID deemed "Restricted" by USAID's Office of Security must have been subject to an appropriate level background investigation by the Defense Security Service (DSS). DSS must issue either an "Interim" or "Final" security clearance for each tasked employee before USAID will grant him or her unescorted access to USAID's restricted spaces(s) or permit him or her

access to classified national security information. If DSS issues an interim personnel security clearance but subsequently denies a final clearance for an employee of a cleared contractor, the contractor must immediately remove the employee from USAID-restricted space and prevent him or her from having access to or handling classified or administratively controlled materials. The contractor is responsible for providing properly cleared personnel to work on the contract and for ensuring that performance is not jeopardized.

(e) The contractor's Facility Security Officer (FSO) must forward a valid "Visit Request" identifying their representatives/employees and the required security clearance information to the USAID Office of Security, Room 2.06A, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20523-8800.

(f) In the event the contractor subcontracts any work to be performed under this contract, the contractor is responsible for issuing the security guidance provided by USAID to any subcontractor and ensuring that subcontractors comply with security requirements of the contract.

(g) The USAID Office of Security will issue RRB facility passes to individual contractor representatives/employees upon receipt and verification of the security data contained in the "Visit Authorization Request". The contractor must ensure that any passes issued are returned upon termination of employment or completion of the contract, whichever occurs first."

H.16 RESTRICTIONS

Currently there are several statutory restrictions on assistance to Iraq. No assistance under this contract shall be provided to Iraq until USAID has determined that it is consistent with US foreign policy and permitted by law. In particular, the contractor shall not proceed with any payments to local nationals or firms or organizations until instructed by USAID. In addition, the contractor is subject to the requirements of the Office of Foreign Assets Control, Department of Commerce's Export Administration Regulations, and the UN Goods Review List and must comply therewith.

H.17 NOTICE OF POSSIBLE ADDITIONAL OR NEW WORK

A blanket approval has been granted the Administrator of the United States Agency for International Development permitting various waivers concerning activities in Iraq that are carried out or initiated under the mandate of the Near East Task Force of USAID.

USAID may, at its discretion, invoke that authority to negotiate one or more contract modifications to do one or more of the following without further competition:

- (1) Add additional projects beyond the \$600,000,000 for the base and optional periods;
- (2) Extend the contract and add additional follow-on projects not covered by the base and optional periods; and/or
- (3) Increase the level of effort.