

## SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

### 107.01 **LAWS TO BE OBSERVED** – Revise this Subsection to read:

The Contractor is assumed to be familiar with all federal and local laws, codes, ordinances, and regulations which, in any manner, affect those engaged or employed in the work or the material or equipment used in or upon the site, or in any way affect the conduct of the work. No pleas of misunderstanding or ignorance on the part of the Contractor will, in any way, serve to modify the provisions of the contract.

The Contractor, at all times, shall observe and comply with all Federal and local laws, codes, ordinances, and regulations in any manner affecting the conduct of the work, and the Contractor and his surety shall indemnify and save harmless the Commonwealth and all its officers, agents and servants any claim or liability arising from or based on the violation of any such law, code, ordinance, regulation, order, or decree, whether by himself or his employees.

The Contractor shall be responsible for reporting to the Commonwealth Historical Preservation Office for verification and determination any discovery encountered during execution of this contract bearing archaeological, cultural, or historical content.

Add the following to this Subsection:

- a. **PERMITS AND RESPONSIBILITIES** - Unless otherwise agreed, the Contractor shall, without additional expense to the Government, be responsible for obtaining all necessary licenses and permits and for complying with all applicable Federal, Commonwealth of the Northern Mariana Islands, and municipal codes and regulations in connection with prosecution of the work. The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the work, except for any completed unit of construction or portion thereof that has been accepted.
- b. **APPLICABLE TAXES** - Without additional expense to the Owner, pay all applicable Federal and Territorial taxes. In addition to the general contractor liability, sub-contractors are also subject to these provisions. The successful bidder will be required to submit a list of his sub-contractors and the monetary value of each sub-contractor to be used for gross receipt tax purposes.
- c. **PERMISSION TO ENTER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS** - Permission to enter the Commonwealth of the Northern Mariana Islands must be secured from the CNMI Department of Commerce and the Department of Homeland Security (DHS), by filling out the requisite standard forms.

- d. **SOCIAL SECURITY** - Afford Social Security System under the Commonwealth of the Northern Mariana Islands all employees including his sub-contractors. The employee withholding is 7.65% of the first \$62,700.00 of wages earned. The employer contribution is a like amount. Additional information can be obtained from the Social Security Office, Commonwealth of the Northern Mariana Islands, Saipan.
- e. **TRANSPORTATION AND LODGING EXPENSE** - If the Contractor utilized nonresident labor as defined in Title 49 of the CNMI Code, and if the Contractor provides either transportation, lodging or lodging expense, or room or board expenses to any such employee, then such Contractor shall provide the same benefits to resident employees, as defined in Title 49; provided, however, that transportation, lodging, or lodging expenses; or room or board expenses need not be provided when a resident employee maintains his principal place of residence within normal commuting distance, as defined by regulations implementing Public Law No. 4C-49, from his place of employment with such Contractor.
- f. **OFFICIALS NOT TO BENEFIT** - No member of Congress of the United States, member of the Commonwealth of the Northern Mariana Islands Legislature or the Governor of the Commonwealth of the Northern Mariana Islands shall be admitted to any share of the Contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.
- g. **PATENT INDEMNITY** - Except as otherwise provided, the Contractor agrees to indemnify the Commonwealth and its offices, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States and/or foreign country (except Letters Patent issued upon an application which is now or may hereinafter be, for reasons of national security, ordered by the Commonwealth to be kept secret or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal by or for the account of the Commonwealth of supplies furnished or construction work performed hereunder.
- h. **CONVICT LABOR** - In connection with the performance of work under the Contract, the Contractor agrees not to employ any persons undergoing sentence of imprisonment at hard labor.

**107.03**      **BULLETIN BOARD** - This subsection is revised to read as follows:

Furnish a bulletin board, suitable for outside installation and enclosed with a transparent window, for posting required posters on the project in a conspicuous place available to employees and applicants for employment. Place posters where minimum sunshine will strike thereon.

The bulletin board shall have minimum dimensions of three feet in the vertical and four feet in the horizontal and be installed so the bottom of the board is approximately three and one-half feet above the ground. The bulletin board shall remain the property of the Contractor after completion of the contract.

**107.04      RAILROAD PROTECTION - Not Used.**

**107.05      RESPONSIBILITY FOR DAMAGE CLAIMS - Modify Items (b) and (c) to read as follows:**

- b) Bodily Injury Liability Insurance shall provide a limit of not less than \$100,000 for all damages arising out of bodily injuries to or death of one person; and subject to that limit for each person, a total limit of \$300,000 for all damages arising out of bodily injuries to or death of two or more persons in any one accident.

Property Damage Liability Insurance: Property Damage Liability Insurance shall provide a limit of not less than \$50,000 for all damages arising out of injury to or destruction of property in any one accident; and subject to that limit per accident, a total or aggregate limit of \$100,000 for all damages arising out of injury to or destruction of property during the policy period.

- c) Comprehensive Automobile Liability Insurance: Coverage of this insurance for all owned, non-owned and hired vehicles shall have the following minimum amounts: Personal injury, \$100,000.00 each person, and \$300,000.00 each occurrence; Property damage, \$50,000.00.

The comprehensive general and automobile liability policies shall contain a provision worded as follows:

*“The insurance company waives any right of subrogation against the Government of the Northern Mariana Islands which may arise by reason of any payment under this policy”.*

Add the following to this Subsection:

Builder’s Risk: The Contractor shall carry Builder’s Risk (fire and lightning, typhoon, earthquake, vandalism and malicious mischief, and extended coverage) Insurance on all work in place and materials stored at the work site, including foundations and building equipment. The Builder’s Risk Insurance shall be for the benefit of the Contractor and the Commonwealth of the Northern Mariana Islands as their interest may appear and each shall be named in the policy or policies as an assured. Policies shall be in effect at all times for the full cash value of all completed construction work, as well as materials in place and stored at the site, whether or not partial payment has been made by the Commonwealth of the Northern Mariana Islands. The Contractor may terminate this insurance on work taken over for occupancy by the Commonwealth of the Northern Mariana Islands as of the said work is accepted.

The Contractor shall procure and thereafter maintain workmen’s compensation, comprehensive general liability, comprehensive automobile liability, and builder’s risk insurances, and the Subcontractor shall procure and thereafter maintain workmen’s compensation, comprehensive general liability, comprehensive automobile liability insurances with respect to their performance under the contract; provided, that the contractor may with the approval of the Contracting Officer, maintain a self insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may, from time to time, require or approve, and with insurers approved by the Contracting Officer.

Submit three (3) copies of these insurance policies to the Contracting Officer on the date stipulated on the Intent for Award letter and that no construction activities should start unless these policies are reviewed, approved and accepted. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Commonwealth in such insurance shall not be effective until 30 days after the Contracting Officer has received written notice from the insurer, as evidenced by return receipt of registered or certified letter.

The Contractor shall be liable for the torts and wrongful acts of its employees and staff members, and shall carry insurance necessary for the protection of its employees and staff members during the life of the Contract, and shall indemnify and hold harmless the Commonwealth from any and all claims, demands, suits, and causes of action whatsoever involving third parties arising out of or connected with the negligent performance of the Contract.

At the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor failed to do so, the Owner may serve a written notice to the Contractor to either pay the unpaid bills or withhold from the compensation of the Contractor an amount to pay all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully settled.

In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor. Any payments made by the Owner shall be considered payment made under the contract by the Owner to the Contractor. The Owner shall not be liable to the Contractor of any such payment made in good faith.

**107.06**      **CONTRACTOR'S RESPONSIBILITY FOR WORK** – Add the following to this subsection:

Repair all private driveways and roads affected by change in grades or otherwise affected by the construction, and all public highways damaged by the Contractor's operation on or adjacent to these highways. Reconstruct driveways and private roads according to the typical section shown on the plans or as directed by the Engineer. Repair private or public road to remain that are damaged by his operation without cost to the Government. Provide with temporary access to private driveways and roads affected by construction to avoid isolation at no additional cost to the Government.

In case of an emergency that threatens loss of life, injury or property damage, take necessary action without instructions from the Contracting Officer as the situation may warrant. Notify the Contracting Officer immediately thereafter and submit any claim for compensation with supporting documents regarding the incurred expenses. The amount of compensation will be decided by agreement or arbitration.

- (a)    **FEES AND CHARGES** – Pay all fees and charges pertaining to temporary connection to utilities for construction.
- (b)    **SUPERINTENDENCE BY CONTRACTOR** – Provide personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for

him. Employ such superintendent, foreman and workmen as are careful and competent. The Contracting Officer may demand the dismissal of any person employed by the Contractor in, about, or upon the work who engage in misconduct or be incompetent or negligent in the proper performance of duties, or neglects or refuses to comply with the directions given, and such person shall not be employed again thereon without the written consent of the Contracting Officer. Should the Contractor continue to employ, or again employ any person for whom the Contracting Officer has demanded dismissal under this clause, the Contracting Officer may withhold all payments, which are or may become due, or the **Contracting Officer may suspend the work until such orders are complied with.**

- (c) **APPROPRIATENESS OF EQUIPMENT** – Furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the work are subject to the approval of the Contracting Officer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the work shall be such that no injury to the work, roadways, adjacent property, or other objects will result from its use. The contract may be terminated if the Contractor fails to provide adequate and proper equipment for the work.
- (d) **PERFORMANCE OF WORK BY CONTRACTOR** - Perform on the site and with his own organization, work equivalent to at least fifty one percent (51%) of the total amount of work to be performed under the contract. The Contracting Officer may reduce the percentage of work if he determines that it would be to the advantage of the Commonwealth.
- (e) **CONDITIONS AFFECTING THE WORK** - The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local condition which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Commonwealth. The Commonwealth assumes no responsibility for any understanding or presentations concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless so stated in the contract.

Make a request for assistance from appropriate Commonwealth authorities to indicate the actual locations of existing utilities to preclude damage during construction. Make inquiries about construction requirements from the Technical Services Division Highway Branch, Department of Public Works prior to beginning work on the project.

- (f) **STORM PROTECTION** - The Contractor, at no additional cost to the Government, shall be responsible for the security and safety of the construction work and the site, including the Contractor's campsite, when warnings of winds of gale force are issued. Gale winds are defined as having a sustained velocity of 34 knots (39 MPH) or greater and include winds of tropical storms and typhoon intensity.

Satisfactory job site clean-up is the initial, basic, day-to-day minimal preparation the Contractor can make for winds of destructive force. When warnings of winds of gale force are issued, the Contractor shall carry out, without delay, all directives concerning securing action to be taken which may be issued to him by the Contracting Officer or

his designated representative. This preparation is in accordance with the contract terms and every practicable precaution shall be taken to minimize the danger to persons; to prevent damage to work in place, materials, supplies, equipment, adjacent structures, and property of others; and in the public interest.

- (g) **SITE INVESTIGATION** - The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, or similar physical conditions at the site, the conformations and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Commonwealth, as well as from information presented by the drawings and specifications made as part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Commonwealth assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Commonwealth.

**107.07      FURNISHING OF RIGHTS-OF-WAY** – Revise this Subsection to read as follows:

The Government will furnish all lands, easements, and rights-of-way required for completion of the work. In acquiring easements or rights-of-way the Government will proceed as expeditiously as possible. However, in the event all rights-of-way or easements are not acquired prior to the beginning of construction, the Contractor shall begin work on such lands and rights-of-way as have been acquired. No claim for damage will be allowed by reason of the Government's delay in obtaining lands, easements, or rights-of-way. In the event of litigation or other delays in acquiring rights-of-way, the time allowed herein for completion of the work will be extended to compensate the Contractor for time actually lost by such delay.

**107.08      SANITATION, HEALTH AND SAFETY** - Add the following to this Subsection:

Adequate sanitary conveniences of an approved type for the use of persons employed on the work, and properly secluded from public observation, shall be provided and maintained by the Contractor in such a manner and at such points as shall be required or approved by the Contracting Officer. These conveniences shall be maintained at all times without nuisance, and this shall be strictly enforced. Upon completion of the work, they shall be removed from the premises, leaving the premises clean and free from nuisance.

The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction or portion thereof that has been accepted.

**107.11**      **PROTECTION OF FORESTS, PARKS, AND PUBLIC LANDS** – Under the first paragraph, strike-out the phrases “Bureau of Land Management” and “Bureau of Indian Affairs”.

Add the following to this Subsection:

(a)      **PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS:**

- i.        The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on, or adjacent to, the site of work which are not to be removed and which does not reasonably interfere with the construction work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation deemed to be in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.
- ii.      The Contractor shall protect from damage all existing improvements and utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with requirements of the Contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

**END OF SECTION 107**