

SECTION B - SUPPLIES OR SERVICES/PRICES

B.1 TYPE OF CONTRACT AND SERVICES BEING ACQUIRED

This is an Indefinite Delivery/Indefinite Quantity (IDIQ) contract under which Time-and-Materials (T&M) and Firm-Fixed-Price (FFP) task orders will be issued. The Contractor has the responsibility for determining the specific methods and approaches for accomplishing the identified work. The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the following items of work which are described in the Section C – Performance Work Statement:

- Task 1: Conduct Natural Resource Damage Assessment Activities
- Task 2: Prepare a Restoration Plan and Compensation Determination Plan, a Report of Assessment, and a Restoration Plan
- Task 3: Prepare the Administrative Record
- Task 4: Maintain Trustee Council Website, Facilitate Trustee Council meetings, and Perform Administrative Support Activities to Trustee Council

B.2 CEILING PRICE OF MASTER CONTRACT

Contract Term	<u>Five Years</u>
Contract Price (Estimated Maximum)*	<u>\$24,000,000.00</u>

**Task orders may be issued up to the estimated maximum value of the master contract at the fully-burdened labor rates established in Section J, Attachment A.*

B.3 GUARANTEED MINIMUM AND ESTIMATED MAXIMUM VALUES

- (a) The guaranteed minimum value of services to be ordered as required by Section I, FAR 52.216-22, *Indefinite Quantity*, is \$50,000.00.
- (b) The estimated maximum value of services to be ordered as required by Section I, FAR 52.216-22, *Indefinite Quantity*, is \$24,000,000.00.

B.4 FUNDING

Funding will be obligated to each individual task order up to the ceiling price of the master contract. All task orders issued under this contract count towards the ceiling price of \$24,000,000.00, and the total cumulative value of the task orders issued shall not exceed the contract ceiling price.

B.5 LIMITATION OF GOVERNMENT'S OBLIGATION (FOR FIRM-FIXED-PRICE CLINS)

- (a) If a firm-fixed-price task order is incrementally funded, in the event of termination before it is fully funded the Government's maximum liability for the TASK ORDER will be the lower of the amount of funds allotted to the TASK ORDER or the amount payable to the Contractor per the Termination for Convenience (Fixed-Price) clause of this contract. For each TASK ORDER there is:
- (1) a fixed price for the action;
 - (2) a fixed amount of work that corresponds to the firm-fixed-price;
 - (3) a planned funding schedule that corresponds to the firm-fixed-price and the fixed amount of work;
 - (4) no Government obligation to the Contractor until the Government allots funds to the contract for the action;
 - (5) if the Government incrementally allots funds, both a firm-fixed-price for the services the allotted funds cover and a maximum Government obligation, including any termination obligations, to the Contractor equal to the allotted funds; and
 - (6) an obligation that the Government will pay the Contractor for the work the Contractor performed for which funds were allotted based on the firm-fixed-price for the services the allotted funds covered and the firm-fixed-price of the work performed, not the costs the Contractor actually incurred.
- (b) For each TASK ORDER:
- (1) the Government's maximum obligation, including any termination obligations and obligations under change orders, equitable adjustments, or unilateral or bilateral contract modifications, at any time is always less than or equal to the total amount of funds allotted by the Government to the TASK ORDER;
 - (2) the Contractor explicitly agrees it reflected (that is, included or could have included an additional amount) in its offered price and in the subsequent negotiated firm-fixed-price for each of the firm-fixed-price TASK ORDERS issued:
 - i. the added complexity, challenges, and risks (including all risks, costs or otherwise, associated with termination as articulated in this clause) to which the Contractor is subject due to the incremental funding arrangement established in this clause; and
 - ii. the specific risk that in the event of termination of an incrementally funded TASK ORDER before the TASK ORDER is fully funded, the Contractor could receive less than the Termination for Convenience (Fixed-Price) clause of this contract would allow,

that is, because the maximum Government obligation for a firm-fixed-price TASK ORDER is the allotted funds for the TASK ORDER, the Contractor will receive the lower of the allotted funds or what the Termination for Convenience (Fixed-Price) clause of this contract would allow.

- (3) the Contractor is not authorized to continue work beyond the point at which the total amount payable by the Government, which is the firm-fixed-price of the services the allotted funds cover, equals the total amount allotted to the contract for the services;
 - (4) if funds become available and the Government's need continues, the Government will allot funds periodically to the TASK ORDER, the Contractor will provide a fixed amount of work for the funds allotted, and the Government will pay the Contractor based on the firm-fixed-price of the fixed amount work. The Government will not pay the Contractor based on the costs the Contractor incurs in performing the work; and
 - (5) the Contractor agrees to provide the fixed amount of work for the firm-fixed-price identified in the contract's Section B, Supplies or services and prices/costs, and in accordance with the delivery schedule identified in the contract's Section F, Deliveries or performance, provided the Government provides the funding per or earlier than the Planned Funding Schedule in paragraph (n) of this clause. At any time, the cumulative amount of funds allotted is the fixed price for the cumulative fixed amount of work identified with the funds.
- (c) For each TASK ORDER:
- (1) The firm-fixed-price (of both the entire TASK ORDER and of the current cumulative amount of funds allotted to the TASK ORDER at any time during contract performance) is not subject to any adjustment on the basis of the Contractor's cost experience;
 - (2) The contract places the maximum risk and full responsibility on the Contractor for all costs and resulting profit or loss; and
 - (3) If the Government meets the entire Planned Funding Schedule,
 - i. the cumulative amount of funds allotted will equal the TASK ORDER's firm-fixed-price and
 - ii. the Contractor must provide the work the contract requires for the TASK ORDER.
- (d) The firm-fixed-price for each TASK ORDER will be listed in Section B of each individual TASK ORDER.
- (e) The Planned Funding Schedule for each TASK ORDER will be listed in each individual TASK ORDER. The sum of the planned funding for each TASK ORDER equals the firm-fixed-price of the TASK ORDER.

- (f) The Actual Funding Schedule for each TASK ORDER will be listed in each individual TASK ORDER. It specifies the actual amount of funds allotted and presently available for payment by the Government and the work to be performed for the funds allotted.
- (1) The Contractor may bill against a TASK ORDER only after the Government has allotted funds to the TASK ORDER and the Contractor has delivered the services and earned amounts payable for the TASK ORDER.
- i. The Contractor may bill only the lower of the two preceding amounts, that is, the lower of allotted funds or amount payable.
 - ii. If the Contractor does not perform the contract's requirements for the TASK ORDER, it must return the amounts that it billed that the Government reimbursed.
- (g) If during the course of this contract the Government is allotting funds to a TASK ORDER per or earlier than the Planned Funding Schedule, this contract to that point will be considered a simple firm-fixed-price contract for that TASK ORDER regardless of the rate at which the Contractor is, or is not, earning amounts payable, and:
- (1) The Government's and the Contractor's obligations under the contract for the TASK ORDER—with the exception that the Government's obligation for the TASK ORDER is limited to the total amount of funds allotted by the Government to the TASK ORDER and similarly the Contractor is not authorized to continue work beyond the point at which the total amount payable by the Government equals the total amount allotted—will be as if the TASK ORDER were both firm-fixed-price and fully funded at time of contract execution, that is, the Contractor agrees that: it will perform the work of the contract for that TASK ORDER; and neither the firm-fixed-price for the TASK ORDER nor any other term or condition of the contract will be affected due to the TASK ORDER's being incrementally funded.
- i. The Contractor agrees, for example, if the Government allots funds to a TASK ORDER per or earlier than all of the funding dates in the Planned Funding Schedule for the TASK ORDER, the Government has met all of its obligations just as if the TASK ORDER were fully funded as of the time of contract execution and the Contractor retains all of its obligations as if the TASK ORDER were fully funded as of the time of contract execution, while at the same time the Contractor is not authorized to continue work beyond the point at which the total amount payable by the Government equals the total amount allotted to the contract; consequently, if the Contractor earns amounts payable at any time

in performing work for the TASK ORDER that exceed the total amount of funds allotted by the Government to the contract for the TASK ORDER

- A. it (not the Government) will be liable for those excess amounts payable
 - B. it will remain liable for its obligations under every term or condition of the contract and
 - C. if it fulfills all of its obligations for that TASK ORDER and the Government allots funds to the TASK ORDER equal to the TASK ORDER's firm-fixed-price, the Government will pay it the firm-fixed-price for the TASK ORDER and no more.
- ii. The Contractor also agrees, for example, if the Government allots funds to a TASK ORDER by the first funding date in the Planned Funding Schedule, the Government has met all of its obligations up to that point in the contract as if the TASK ORDER were fully funded (that is, as if progress payments based on cost had been agreed to and had been made, or milestone payments had agreed to and been made, or etc.) and the Contractor retains all of its obligations up to that point (such as meeting delivery schedules, maintaining quality, etc.) as if the TASK ORDER were fully funded; consequently, if the Government subsequently terminates the TASK ORDER it will pay the Contractor the lower of the following two amounts: the amount allotted by the Government to the TASK ORDER; or the amount payable per the Termination for Convenience (Fixed-Price) clause of this contract.
- (h) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the amount payable it expects to earn for the TASK ORDER in the next 60 days, when added to all amounts payable previously earned, will exceed 75 percent of the total amount allotted to the TASK ORDER by the Government.
- (1) The notification is for planning purposes only and does not change any obligation of either the Government or the Contractor.
 - (2) The Contractor is not authorized to continue work beyond the point at which the total amount payable by the Government equals the total amount allotted to the TASK ORDER.
 - (3) The Government may require the Contractor to continue performance of that TASK ORDER for as long as the Government allots funds for that TASK ORDER sufficient to cover the amount payable for that TASK ORDER.

- (i) If the Government does not allot funds to a TASK ORDER per or earlier than its Planned Funding Schedule, the Contractor may be entitled to an equitable adjustment and:
 - (1) the Government's maximum obligation, including any termination obligation, to reimburse the Contractor remains limited to the total amount of funds allotted by the Government to the contract for that TASK ORDER;
 - (2) the Contractor is not authorized to continue work beyond the point at which the total amount payable by the Government equals the total amount allotted to the contract;
 - (3) if the Government subsequently terminates the TASK ORDER, it will pay the Contractor the lower of the following two amounts: the total amount of funds allotted by the Government to the contract for the TASK ORDER; or the amount payable per the Termination for Convenience (Fixed-Price) clause of this contract.

- (j) Except as required by either other provisions of this contract specifically citing and stated to be an exception to this clause, or by, among other things, terminations, change orders, equitable adjustments, or unilateral or bilateral contract modifications specifically citing and stated to be an exception to this clause, for either TASK ORDER:
 - (1) The Government is not obligated to reimburse the Contractor in excess of the total amount allotted by the Government to this contract for the TASK ORDER; and
 - (2) The Contractor is not obligated to continue performance under this contract related to the TASK ORDER or earn amounts payable in excess of the amount allotted to the contract by the Government until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to the TASK ORDER.

- (k) No notice, communication, or representation in any form, including, among other things, change orders, equitable adjustments, or unilateral or bilateral contract modifications, other than that specified in this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract for a TASK ORDER, which will remain at all times the Government's maximum liability for a TASK ORDER. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any amounts payable earned for a TASK ORDER in excess of the total amount allotted by the Government to this contract for a TASK ORDER, whether earned during the course of the contract or as a result of termination.

- (l) Change orders, equitable adjustments, unilateral or bilateral contract modifications, or similar actions shall not be considered increases in the Government's maximum liability or authorizations to the Contractor to exceed the amount allotted by the Government for a TASK ORDER unless they contain a statement increasing the amount allotted.

- (m) Nothing in this clause shall affect the right of the Government to terminate this contract for convenience or default.