

United States Department of the Air Force

Air Combat Command (ACC), Air Force Global Strike Command (AFGSC), Air Force Space Command (AFSPC) and Air Force Center for Engineering and the Environment (AFCEE)



**Privatization of Military Family Housing
Beale, FE Warren, Malmstrom, and Whiteman Air
Force Bases (“Western Group”)**

Solicitation No. AFCEE-09-0002

APPENDIX N Mandatory Clauses Required by Federal Law

**PROPOSALS ARE DUE NO LATER THAN
5:00 P.M. MST 21 SEPTEMBER 2010 AT:**

ALVAREZ & MARSAL REAL ESTATE ADVISORY SERVICES
C/O EMAX FINANCIAL & REAL ESTATE ADVISORY SERVICES, LLC
60 Broad Street, Suite 3501
New York, NY 10004
Voice: 212.813.3510 Fax: 212.813.3505
Email: western@emaxllc.com
Web site: www.amafpress.com/projects/western

APPENDIX N. MANDATORY CLAUSES REQUIRED BY FEDERAL LAW

Offerors are required to incorporate the clauses in this Appendix into their proposals. The successful Offeror's proposal will be incorporated into the Lease of Property, and these clauses will thereby become binding on the Offeror.

ANTI-KICKBACK PROCEDURES

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to the Lessee, Lessee's employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with the lease or associated agreements for this solicitation or in connection with a subcontract relating to the lease or primary agreements.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a lease or associated agreements entered into by the United States for the purpose of providing access to quality affordable housing for military families.

"Subcontract," as used in this clause, means a contract or contractual action entered into by the Lessee or a subcontractor of the Lessee for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Subcontractor," as used in this clause, (1) means any person, other than the Lessee, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind to the Lessee or a subcontract the Lessee enters into in connection with the lease or associated agreements, and (2) includes any person who offers to furnish or furnishes general supplies to the Lessee or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1968 (41 U.S.C. 51-58) (the Act), prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Lessee shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Lessee has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Lessee shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Lessee shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any moneys owed by the United States under the lease and/or (ii) direct that the Lessee withhold from sums owed a subcontractor under the lease the amount of the kickback. The Contracting Officer may order that moneys withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has

already offset those moneys under subdivision (c)(4)(i) of this clause. In either case, the Lessee shall notify the Contracting Officer when the moneys are withheld.

(5) The Lessee agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this lease.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

(a) *Overtime requirements.* No Lessee or subcontractor contracting for any part of the lease work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Lessee and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Lessee and subcontractor shall be liable to the United States (in the case of work done under lease for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Lessee or subcontractor under any such lease or any other Federal Contract with the same Prime Lessee, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Lessee, such sums as may be determined to be necessary to satisfy any liabilities of such Lessee or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.* (1) The Lessee or subcontractor shall maintain payrolls and basic payroll records during the course of lease work and shall preserve them for a period of 3 years from the completion of the lease for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Lessee or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Lessee or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Lessee or subcontractor shall insert in any subcontract exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Lessee shall be responsible for compliance by any subLessee or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

DAVIS-BACON ACT

The Government's involvement in the oversight of the Davis-Bacon Act requirements are limited to monitoring the Project Owner's responsibilities only during the construction period(s). This oversight involves validating the Project Owner ensures that any class of laborers or mechanics employed or working on the site are in compliance with the Davis-Bacon wage classifications and standards.

WITHHOLDING OF FUNDS

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Lessee under this lease or any other Federal contract with the same Lessee, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Lessee, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Lessee or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Lessee, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

PAYROLLS AND BASIC RECORDS

(a) Payrolls and basic records relating thereto shall be maintained by the Lessee during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis- Bacon Act, the Lessee shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Lessee agrees that it and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Lessee shall submit weekly for each week in which any lease work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Lessee is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Lessee or subLessee or his or her agent who pays or supervises the payment of the persons employed under the lease and shall certify—

(i) That the payroll or the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the lease during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Lessee or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Lessee or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Lessee or subcontractor shall permit the Contracting Officer or representative of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Lessee or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available, may be grounds for debarment action pursuant to 29 CFR 5.12.

APPRENTICES AND TRAINEES

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Lessee as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Lessee is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate specified in the Lessee's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State

Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Lessee will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Lessee will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Lessee shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this agreement.

SUBCONTRACTS (LABOR STANDARDS)

(a) The Lessee or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility*, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Lessee shall be responsible for compliance by any subLessee or lower tier subcontractor with all of the lease clauses cited in this paragraph.

(b)(1) Within 14 days after award of the lease, the Lessee shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract. (2) Within 14 days after the award of any subsequently awarded subcontract the Lessee shall deliver to the Contracting Officer an updated completed SF 1413 for each additional subcontract.

LEASE TERMINATION—DEBARMENT

A breach of the lease clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon Related Act Regulations, or Certification of Eligibility* may be grounds for termination of the lease, and for debarment as a Lessee and subcontractor as provided in 29 CFR 5.12.

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this lease.

DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this agreement. Disputes within the meaning of this clause include disputes between the Lessee (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

CERTIFICATION OF ELIGIBILITY

- (a) By entering into this agreement, the Lessee certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this lease shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

BUY AMERICAN ACT - CONSTRUCTION MATERIALS

(a) The Buy American Act (41 U.S.C. §§ 10a – 10d) provides that the Government give preference to domestic construction material, as defined below. Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies.

Free Trade Agreement country means Australia, Canada, Chile, Mexico, or Singapore. Designated country means any of the following: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Domestic construction material, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

(b) Construction materials. Construction materials that are from a designated country, a Free Trade Agreement country, or domestic construction material are allowable. Construction material originating from countries other than these and are of the same class, kind, and quality, may be approved for use by the Management Review Committee, when requested, if the available construction materials are determined to be not timely available in sufficient quality or quantity, or to be unreasonable in cost.

(c) Notwithstanding any other language in this clause or elsewhere in this agreement, the Lessee shall not acquire or use any materials, supplies, or services originating from, located in, or transported from or through, any country or source prohibited from lawful importation into the United States by applicable statute, Executive Order, or regulation.

(d) The Lessee agrees that only allowable construction material will be used by the Lessee, subcontractors, material men, and suppliers in the performance of this lease, except for foreign construction materials, if any, listed in this lease.

CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

In accordance with the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"), cable providers may offer to provide cable television (CATV) services within the project area and the Air Force, as the Franchise Authority, will consider all such offers in accordance with AFI 64-101, *Multi-channel Video Programming Distribution (Broadcast Cable)*. Where the Air Force has already awarded a franchise to one or more CATV providers, the Air Force may award additional franchises and renew existing franchises.

The franchise agreement is not a contract to provide CATV services. The franchise agreement only grants the CATV provider the right to enter the base, including the project area, to offer CATV services to potential subscribers. Franchise agreements do not obligate any individual subscriber, or non-appropriated, or appropriated fund activity to purchase CATV service.

The Successful Offeror is required to ensure that the infrastructure necessary to provide CATV services is in place and available to tenants within the project area. The Successful Offeror may satisfy this obligation by installing, maintaining and operating such infrastructure if it has obtained a franchise from the Air Force or by entering into an agreement to install, maintain, and operate such infrastructure with any CATV provider with a franchise agreement with the Air Force. The Successful Offeror may also solicit proposals or consider unsolicited proposals from CATV providers willing to compete with the existing CATV franchisee to participate in such an agreement. However, the Successful Offeror may satisfy its obligations under the Lease by agreement with a CATV only if that CATV provider has been awarded a franchise by the Air Force. Any franchise agreement awarded by the Air Force will comply with any applicable Air Force instruction or regulation as may be in effect from time to time.