

CONSTRUCTION INSTRUCTIONS

(This attachment applies only to Construction, and supplements Form 73083)

- A. Preparation of Bids - Bidders must make their own evaluation of the facilities and difficulties attending the performance of the proposed order, including local conditions, uncertainty of weather, and all other contingencies.
- B. Purchase Order and Bonding - The Bidder to whom award is made shall, when required, enter into a written order for the work on this project as covered in drawings and specifications and associated documents, with satisfactory security in the amount required within the period specified, or, if no period is specified, within ten days after the prescribed forms are requested by BMPC.
- (1) Fixed price construction subcontracts between \$25,000 and \$150,000 require the subcontractor to provide, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102-1(b)(1).

Fixed price construction subcontracts greater than \$150,000 require the subcontractor to obtain both a Payment Bond in sufficient amount to cover labor and material costs of the order, and to obtain performance protection via a Performance Bond (Standard Form 25) The Performance Bond shall be in an amount equal to 100% of the subcontract price. The penal amount of the Performance Bond shall equal 100% of the subcontract price.

In lieu of obtaining a Performance Bond, Bidder may obtain other approved alternative surety as follows:

1. Irrevocable Letter of Credit

The successful Bidder, in lieu of furnishing surety or sureties on a bond, has the option to furnish irrevocable letters of credit to guarantee performance, payment or both. To do so, the successful Bidder must appropriately complete and sign the applicable bond form and indicate thereon that the respective letter of credit is to be used in lieu of a surety. A separate letter of credit is required for the performance and payment obligations, and must be in the same amounts as required for the bonds under the purchase order. The financial institutions issuing the irrevocable letter of credit must be Federally insured and have an investment grade or higher rating from a recognized commercial rating service. The successful Bidder is required to provide a commercial rating service credit rating, that indicates the financial institution has an investment grade or higher rating, at the same time the irrevocable letter of credit is tendered to BMPC. The letter of credit shall be issued in the name of BMPC and identify the purchase order or inquiry number for which the letter of credit is being issued. BMPC retains full discretion in accepting or rejecting letters of credit. The irrevocable letter of credit may not be revoked until performance on the order is complete. A sample irrevocable letter of credit format is enclosed at the end of this attachment.

Irrevocable letters of credit in excess of \$5 million dollars must be confirmed by another financial institution, with an acceptable rating, that has letter of credit business in the past year of at least \$25 million dollars.

2. Tripartite Escrow Agreement

The Bidder shall establish an escrow account in a Federally insured financial institution and enter into a tripartite escrow agreement with the financial institution and all suppliers of labor and material. BMPC will make payment to the escrow account, and the escrow agent (the financial institution), will distribute payments in accordance with the agreement.

3. Certificates of Deposit

The Bidder shall furnish certificates of deposit from a Federally insured financial institution to BMPC.

- C. Multiple Awards - BMPC may accept any service or group of services of an offer, unless the Bidder qualifies the offer by specific limitations. Unless otherwise provided in the inquiry, bids may not be submitted for quantities less than those specified. BMPC reserves the right to make an award on any services for a quantity less than the quantities offered, at the unit prices offered, unless the Bidder specifies otherwise in the offer.
- D. Notice to Construction Bidders - Within two weeks, or such other time as may be deemed reasonable by BMPC, construction Bidders who are no longer being considered for award may be informed by the BMPC Contract Administrator.
- E. Responsive Bids - Bidders are notified that they must fully complete their Bid Form (Davis-Bacon Action). The following items may disqualify Bidder from consideration for award:
- a. If Bidder fails to provide the following on the Bid Form:
 1. Total price for work specified.
 2. Acknowledgment of Bulletins/Amendments (if they are issued).
 3. Official signature.
 4. Price for performance and payment bonds (if bid exceeds \$25,000) or price for other security, if applicable.
 - b. If Bidder's firm appears on the GSA Excluded Parties List System (EPLS). EPLS is available at: <http://epls.gov>. Bidder shall be ineligible for award.

[Issuing Bank's Letterhead]

Sample Performance or Payment Letter of Credit Form (Construction Actions)

Issue Date _____

Irrevocable Letter of Credit No. _____

Account Party's Name _____

Account Party's Address _____

For Contract No. _____ (for reference only) _____

TO: Beneficiary: BMPC Atomic Power Laboratory
Beneficiary's address: P.O. Box 79, 814 Pittsburgh-McKeesport Boulevard
West Mifflin, PA 15122

We hereby establish this irrevocable and transferable Letter of Credit in your favor for drawings up to United States \$_____. This Letter of Credit is payable at [our] [confirming bank's] office at _____ [Issue bank's address] [confirming bank's address] _____ and expires with [our] [confirming bank's] close of business on _____, 20__.

We hereby undertake to honor your or transferee's sight draft(s) drawn on [us] [confirming bank], for all or part of this Credit if presented at the office specified in the above paragraph on or before the expiry date or any automatically extended expiry date.

It is a condition of the Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless at least 60 days, prior to any expiration date we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you we also agree to notify the account part [and confirming bank] by the same means of delivery.

This Letter of Credit is transferable. Transfer and assignments of proceeds are to be effected without charge to either the beneficiary, or the transferee/assignee of proceeds.

This Letter of Credit is subject to the Uniform Customs and Practice [UCP] for Documentary Credits, 1963 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, the laws of _____ [state of the confirming bank if any, otherwise state of the issuing bank] _____. If this Credit expires during an interruption of business as described in Article 19 of said Publication No. 400, the bank hereby specifically

agrees to effect payment if this Credit is drawn against within 30 days after the resumption of business.