



## INVITATION FOR BID (IFB)

**Date:** 11/1/2013

**Proposal No.:** SF1863-502

KEMRON Environmental Service, Inc. (KEMRON) is soliciting offers to furnish transportation and disposal of hazardous and non-hazardous material. KEMRON contemplates the award of a subcontract/service agreement on a fixed price indefinite quantity basis.

This solicitation contains the statement of work (Exhibit I), a sample services agreement (Exhibit II) and, the required flow down clauses that will be incorporated into the award (Exhibit III). Offerors are cautioned to carefully review all exhibits. Submission of an offer is indication that you are willing to abide by the terms and conditions stated in each exhibit. The exhibits do not need to be returned with your offer (see "Required Content of Offer" below).

### Solicitation Instructions

The following provisions apply to this solicitation.

1. Proposals must be submitted by November 8, 2013 at 12:00 PM (local time). E-mail responses to: [jmurphy@kemron.com](mailto:jmurphy@kemron.com). Facsimile responses are acceptable. Please fax to: 404.636.7162 Attn: Janelle Murphy.
2. All of the forms attached to this solicitation, except for the proposed subcontract agreement, must be returned with your proposal.
3. All prices offered shall remain firm for 90 calendar days from the deadline for proposals specified above unless the deadline is modified by an amendment to this solicitation. This validity period shall apply to all proposals received by KEMRON regardless of whether a different validity period is specifically stated within your proposal.
4. Unless written exception(s) to the proposed services agreement accompany the offer, offerors accept the provisions as proposed without revision or additional compensation.
5. If this solicitation is amended, all terms and conditions that are not amended remain unchanged.
6. Requests for clarification/information must be submitted to KEMRON's Point of Contact in writing with sufficient time for a response to be distributed to all prospective Submit written questions to Janelle Murphy at the fax number above or via e-mail to [jmurphy@kemron.com](mailto:jmurphy@kemron.com) and we will respond to each written question and deliver the response to all potential offerors, as appropriate.

7. You may submit modifications to your proposal at any time before the solicitation deadline, and may submit modifications in response to an amendment or to correct a mistake at any time before award.
8. KEMRON reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal. KEMRON further reserves the right to make multiple awards if, after considering the additional administrative costs, it is in KEMRON's best interest to do so.

#### **Evaluation Criteria – Lowest Price**

KEMRON will award a subcontract to the responsible offeror whose proposal represents the lowest evaluated price offered. KEMRON reserves the right to reject all offers received.

#### **Required Content of Offer**

The following attached forms must be completed and submitted with your offer:

- Compensation Schedule (Attachment A)
- Representations and Certifications (Attachment B)
- CERCLA Compliance (Attachment C)
- Agreement Exceptions (Attachment D)
- Certification of a Compliant Drug Policy (Attachment E)
- Certificate of Training, Medical and Safety Requirements (Attachment F)
- Responsibility Determination Certification (Attachment G)

Thank you for reviewing this solicitation. Please notify me as soon as possible should your firm decide not to submit an offer.

Sincerely,

Janelle Murphy  
Transportation and Disposal Coordinator



## Statement of Work

**Title: Transportation and Recycling of Tires**

**Date: 11/1/2013**

**Proposal No.: SF1863-502**

### 1. Overview

KEMRON Environmental Services, Inc. is the prime contractor for the U.S. EPA Region II, at the Scotts Auto Sales site. As a part of this removal action, KEMRON is soliciting pricing from vendors for transportation and recycling of tires. This material must be transported and disposed of in accordance with all applicable federal, state, and local regulations. Subcontractor(s) to provide all labor, equipment, materials, and supplies, to properly perform this work.

### 2. Site Information

Site Name: Scotts Auto Sales

Street Address: 4724 Rt.50, Northumberland, NY 12831

### 3. Description

**NOTE: Tires cannot go to a staging area or tire dump but must go to an active recycling center or company currently engaged in the reuse or recycling of the tires, e.g. artificial turf, playground padding, asphalt concrete, parking lots, slip-proof surface coatings etc.**

**Line Item A** is for the recycling of car tires. Some may be on the rim and removed from the rim if absolutely necessary.

**Line Item B** is for the recycling of truck tires. Some may be on the rim and removed from the rim if absolutely necessary.

**Line Item C** is for the recycling of equipment tires. Some may be on the rim and removed from the rim if absolutely necessary.

**Line Item D** – is for the transportation of Line Items A-C. All drivers and trucks must be permitted to haul this material.

**Line Item E** – is for any demurrage that may be incurred during the loading of this material. Allow 2 free hours load time. **(see 4.4 below)**. Award of this RFP will not be based on this line item, but the unit rate and extended rate will be included in the “not-to-exceed” value of the awarded subcontract.

**Line Item F** - KEMRON is not tax exempt therefore all applicable State and Local taxes must be included in this line item. Tax should be applied for the state where the waste will be disposed of.

**KEMRON subcontracts are fixed rate ID/IQ, and therefore there is no contract, subcontract or FAR clause or mechanism that allows us to change these fixed rates unless the scope of work changes. Vendors must bid the projects with the current fuel price trends in mind. There cannot be variable rates based on the variable fuel rates, no sliding scale (ex: 20-30% surcharge; has to be 20% or 30%, can't be either/or). This rate MUST be effective for the entire length of this project.**

#### **4. Assumptions:**

1. Subcontractor will be responsible for providing all manifests, placarding, and bills of lading. **Manifest and/or Bills of Lading must be provided at least two days in advance of shipment to facilitate acquiring the necessary signatures.**
2. Scanned copies of weight tickets, per load, will be sent to Janelle Murphy at [jmurphy@kemron.com](mailto:jmurphy@kemron.com) within two days of the loads being dumped at the disposal facility.
3. Certificates of disposal will be required within thirty (30) days of the manifest date to validate invoices for payment.
4. The transporter must allow for up to two (2) free hours for loading and will take full responsibility for offloading at the designated treatment/disposal facility prior to demurrage charges being applied. Prior written approval from KEMRON must be received before any additional cost can be incurred. KEMRON will not pay any demurrage cost without written documentation of when the truck arrived and when the truck departed the site or facility. In order to establish whether demurrage charges are justified and reimbursable by KEMRON, the selected disposal facility must be prepared to show written documentation of the when the truck arrived, when it departed, and why demurrage was incurred beyond the free two (2) hour period. KEMRON will not pay more than 5 hours demurrage per day and will not pay demurrage for more than 4 days in any 7-day period. A day is defined as 24 consecutive hours. If transportation and disposal is required, then it is the Subcontractor's responsibility to schedule the waste into the disposal facility. KEMRON will not pay demurrage at the facility unless the waste is outside of the parameters specified on the waste profile.
5. KEMRON will not be responsible for trucks arriving late at the disposal facility.

#### **5. SCHEDULE**

Transportation and disposal is tentatively set to take place during the week of December 2, 2013. See associated liquidated damages with missing this schedule.

#### **6. DELIVERABLES**

The subcontractor must supply the KEMRON response manager with the following documentation:

##### **6.1 Manifest**

The subcontractor must provide an unsigned, completed manifest, any applicable forms, as well as any other shipping documents, markings, and labels to the KEMRON response manager at least 48 hours prior to the shipment of waste.

The subcontractor must provide a photocopy of the fully executed manifest to the KEMRON response manager and the T&D coordinator **within thirty (30) calendar days** of the waste delivery to the disposal facility, along with a copy of the receiving facilities executed manifest identifying the amount of material received. The awarded vendor must supply documentation regarding when and to whom the TSDf-signed manifest was sent in order to comply with 40 CFR 262.40.

## **6.2 Certificates of Destruction/Disposal**

Certificates of treatment, disposal, and/or destruction from the final disposal facility, along with weigh tickets, must be sent to the KEMRON Transportation and Disposal Coordinator (Janelle Murphy).

Certificates of Destruction/Disposal, if applicable, must include the number of the manifest when the waste was transported off-site, as well as a description of the waste as reported on the manifest, and the final method of disposal. If waste is landfilled, certificate of disposal must include cell location and type of liner in cell.

Within 90 days of waste shipment all waste disposal must be complete and all certificates of disposal and completed invoices received (must include at a minimum: all related executed manifests and all certificates of treatment, storage and disposal not previously received by KEMRON and weight tickets as appropriate). These certificates must be received prior to or with any invoice submitted in order for any payment by KEMRON.

## **6.3 Recovery Act Funds - Federal Reporting**

Both Prime and sub-recipients of Recovery Act funds are required to report contract amounts and other data at <http://www.federalreporting.gov>.

## **6.4 OFF SPECIFICATION MATERIAL**

In the event that any off specification (Off Spec) material arrives at the disposal facility(s), prior written authorization must be given by KEMRON before any additional charges can be incurred. KEMRON defines Off Spec materials as those wastes that prove to be inconsistent with the approved waste profile as accepted by the disposal facility(s). Before KEMRON will authorize any additional cost, the subcontractor will provide in writing, on company letterhead, a statement certifying the waste is Off Spec waste. The signatory of this statement must have the authority to bind the subcontractor's company. In addition to the statement that the waste is Off Spec, the written notification will include the reason the waste was deemed Off Spec. The reason will include how the waste was profiled and which parameter on the profile was incorrect. If the waste is deemed to be Off Spec due to its chemical nature, the Off Spec notification must be accompanied by hard copy analytical data from the laboratory performing the testing that indicates that the materials are Off Spec. In this circumstance, it will be the subcontractor's responsibility to provide (if requested by the KEMRON T&D coordinator and response manager) a 16oz sample of the Off Spec waste at no additional cost to KEMRON. If the waste is Off Spec due to physical characteristics, the vendor must provide KEMRON with photocopies documenting the waste characteristics.

## **7. Liquidated Damages**

For any delay in the acceptance of the waste from the site, not due to acts of KEMRON, the EPA, or other factors outside of the Subcontractor's control (such as inclement weather, floods, acts of war, etc.), a reduction in the total charge for services will be \$500.00 per day for each additional day the waste remains on site (see Schedule). If liquidated damages are invoked KEMRON will deduct the charges from the Subcontractor's invoice prior to payment and notify the Subcontractor in writing.

For any delay in the waste disposition or the receipt of the certificates of disposal beyond the schedule requirements listed in 6.2 will result in a reduction of total payment by 5% per each 30-day period.

## **8. Invoicing**

All invoices must reference the project name (Scotts Auto Sales), Northumberland, New York. Final invoicing must be submitted to KEMRON in accordance with Article 2.1 of the services agreement.



1359-A Ellsworth Industrial Boulevard ■ Atlanta, GA 30318 ■ Telephone (404) 636-0928 ■ FAX (404) 636-7162 ■ <http://www.kemron.com>

## Attachment A – Compensation Schedule

For the Statement of Work described in Exhibit 1, the price must be given in the format specified below. The price must be provided in the format specified below. The description for each line item is provided in the Statement of Work, Exhibit I.

Item	Description	EPA Hazardous Waste Codes	Approximate Quantity	Unit Measure	Unit Price	Extended Price*
A	Recycling of Car Tires	NA	0-1275	Each	\$	\$
B	Recycling of Truck Tires	NA	0-100	Each	\$	\$
C	Recycling of Equipment Tires	NA	0-25	Each	\$	\$
D	Transportation of Line Items A-C	NA	0-15	Load	\$	\$
E	Demurrage – Allow 2 free hours load time	NA	0-2	Hour	\$	\$
F	Tax (State, County/Local)	NA			\$	\$
<b>Grand Total</b>						\$
<p><b>Note:</b> All prices should be shown in U.S. dollars and will remain valid for 90 days from the date of this offer.</p> <p>Pricing must include all fees, fuel surcharges, costs of analysis, or any other costs, which may be involved in the normal course of transporting this waste material to the designated facility, for accepting this type of waste material into the facility, and for performing the treatment and disposal of this waste. KEMRON will not pay any costs outside of the prices shown.</p> <p>Modifications to the bid form will deem your offer as non-responsive and the offer will be disqualified. Therefore, include pricing on each of the line items, per the unit(s), and shown and described in the Statement of Work, Exhibit I. However, if any type of sales or use tax applies, list that separately at the bottom of the pricing page.</p> <p><i>* Please extend your bid price to the highest quantity</i></p>						

Signature below means that the bidder has read and understands this bid package and is willing to execute a KEMRON services agreement without changes. **The signatory must have the authority to bind the bidding company.** The signature also means that all statements in this bid are accurate and truthful.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signatory Name and Title



## Attachment B – Representations and Certifications

**52.252-1 - Solicitation Provisions Incorporated by Reference (Feb 1998)** This solicitation incorporates the following solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Subcontracts Representative will make their full text available.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2005) **(Applicable to Orders in excess of \$100,000)**

The following full text **Federal Acquisition Regulation (FAR)** provisions are applicable to this solicitation.

### 52.204-3 - Taxpayer Identification (Oct 1998)

(a) *Definitions.*

"*Common parent,*" as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"*Taxpayer Identification Number (TIN),*" as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c) (3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of a Federal Government;
- Other. State basis. \_\_\_\_\_

(e) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt):
- Corporate entity (tax-exempt):
- Government entity (Federal, State, or local);

- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(f) *Common Parent.*

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

**52.204-5 - Women-Owned Business [Other Than Small Business] (May 1999)**

(a) *Definition.* Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b) (1) of FAR 52.219-1, Small Business Program Representation, of this solicitation.] The offeror represents that it  is,  is not a women-owned business concern.

**52.209-5 - Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)**

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

(A) **Are  are not  presently debarred**, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) **Have  have not** , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) **Are  are not  presently indicted for**, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a) (1) (i) (B) of this provision.

(ii) The Offeror **has  has not** , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "*Principals*," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**52.215-6 - Place of Performance (Oct 1997)**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation,  **intends**,  **does not intend** (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance  
(Street Address, City,  
State, County, Zip Code)

Name and Address of Owner and Operator of the Plant  
or Facility if Other than Offeror or Respondent

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**52.219-1 - Small Business Program Representations (May 2004)**

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is **562910, Environmental Remediation Services**.

(2) The small business size standard is **500 Employees**.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations*.

(1) The offeror represents as part of its offer that it  is,  is not a **small business concern**.

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (b) (1) of this provision.]* The offeror represents, for general statistical purposes, that it  is,  is not, a **small disadvantaged business concern** as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b) (1) of this provision.] The offeror represents as part of its offer that it  is,  is not a **women-owned small business concern**.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b) (1) of this provision]. The offeror represented as part of its offer that it  is,  is not a **veteran-owned small business concern**.

(5) [Complete only if the offeror represented itself as a small business concern in paragraph (b) (4) of this provision]. The offeror represents as part of its offer that  is,  is not a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b) (4) of this provision]. The offeror represents, as part of its offer, that ---

(i) It  is,  is not a **HubZone small business concern** listed, on the date of this representation, on the List of Qualified HubZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HubZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It  is,  is not a **joint venture** that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b) (6) (i) of this provision is accurate for the HubZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HubZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HubZone small business concern participating in the joint venture shall submit a separate signed copy of the HubZone representation.

(c) *Definitions.* As used in this provision--

“Service-disabled veteran-owned small business concern”-

(1) Means a small business concern

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern,” means a concern, including its’ affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern -

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-Owned small business concern,” means a small business concern --

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HubZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

#### **52.222-21 - Prohibition of Segregated Facilities (Feb 1999)**

(a) "*Segregated facilities,*" as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

#### **52.222-22 - Previous Contracts and Compliance Reports (Feb 1999)**

The offeror represents that:

(a) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It  has,  has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**52.222-25 - Affirmative Action Compliance (April 1984)**

The Offeror represents that (a) it  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**52.222-38 - Compliance with Veterans' Employment Reporting Requirements (Dec 2001)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

**52.223-4 - Recovered Material Certification (Oct 1997)**

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

**52.223-13 - Certification of Toxic Chemical Release Reporting (Aug 2003)**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that --

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *[Check each block that is applicable.]*

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more fulltime employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.

**EPAAR 1552.209-72 - Organizational Conflict of Interest Certification (Apr 1984)**

The offeror [ ] is [ ] is **not** aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information. (See Section L of the solicitation for further information.)

**EPAAR 1552.224-70 - Social Security Numbers of Consultants and Certain Sole Proprietors and Privacy Act Statement (Apr 1984)**

(a) Section 6041 of Title 26 of the U.S. Code requires EPA to file Internal Revenue Service (IRS) Form 1099 with respect to individuals who receive payments from EPA under purchase orders or contracts. Section 6109 of Title 26 of the U.S. Code authorizes collection by EPA of the social security numbers of such individuals for the purpose of filing IRS Form 1099. Social security numbers obtained for this purpose will be used by EPA for the sole purpose of filing IRS Form 1099 in compliance with Section 6041 of Title 26 of the U.S. Code.

(b) If the offeror or quoter is an individual, consultant, or sole proprietor and has no Employer Identification Number, insert the offeror's or quoter's social security number on the following line:

\_\_\_\_\_

**EP 52.299-900 Signature Block (Apr 1984)**

I hereby certify that the responses to the above Representations, Certifications and other statements are accurate and complete.

Signature : \_\_\_\_\_

Title : \_\_\_\_\_

Date : \_\_\_\_\_



### Attachment C - CERCLA Compliance

The facility(s) accepting the waste must be in compliance with the CERCLA Off-Site Disposal Rule (40 CFR 300.440 as stated in Federal Register Vol. 58, No. 182, dated September 22, 1993) and must have all required permits. Canadian disposal facilities will not be considered without permission and prior written approval from the United States Environmental Protection Agency. All intermediate facility(s), Treatment, Storage, and Disposal Facility(s) (TSDF) at which waste stops en route to the final disposal facility must also be in compliance with the Off-Site Policy. If, at any time during the duration of this contract, the TSDF or ultimate disposal facility(s) receive notice that it is not or may not be in compliance with the CERCLA Off-Site Disposal Rule, the Subcontractor must notify KEMRON’s Project Manager immediately, in writing. In any event, KEMRON shall have the right to unilaterally terminate the Subcontract.

TSDF will take place at the following:

<b>Facility Name:</b>	<b>Please list the Method of Treatment/Disposal and Indicate for which Line Item:</b>
<b>Facility Location:</b>	
<b>EPA ID Number:</b>	

<b>Name of Transporter 1:</b>	<b>Name of Transporter:</b>
<b>EPA ID Number (if applicable):</b>	<b>EPA ID Number (if applicable):</b>

**KEMRON will not pay for any Treatment, Storage, and/or Disposal which takes place at a facility not listed** by the vendor herein as one of the disposal facilities that will be used. If a different disposal facility must be used, a written Change Order must be executed by KEMRON and the Subcontractor prior to its use in order for the Subcontractor to be paid.

\_\_\_\_\_  
**Signature of Authorized Representative**

\_\_\_\_\_  
**Date**

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NOTICE: Offerors must provide exceptions to the proposed subcontract with their offer. If the offeror has no exceptions, please write "None" below.

---

<b>NAME AND ADDRESS OF OFFEROR</b>	<b>NAME OF SIGNER</b>
	<b>TITLE OF SIGNER</b>
<b>OFFEROR</b> ( <i>Signature of person authorized to sign</i> )	<b>DATE</b>

Pursuant to KEMRON’S policy and as a condition of award of a subcontract, Subcontractor must have in place and enforce a drug policy that is at least as stringent as KEMRON’s drug policy requirements.

Subcontractor hereby certifies that it has adopted and agrees to implement at all times during the term of any subcontract awarded to Subcontractor by KEMRON a policy that meets or exceeds KEMRON’S minimum standards for Drug Free Workplace Program.

<b>NAME AND ADDRESS OF OFFEROR</b>	<b>NAME OF SIGNER</b>
	<b>TITLE OF SIGNER</b>
<b>OFFEROR</b> <i>(Signature of person authorized to sign)</i>	<b>DATE</b>

## Attachment F - CERTIFICATE OF TRAINING, MEDICAL & SAFETY REQUIREMENTS

The Offeror hereby certifies that the Offeror's employees who will be engaged in work on or near the project that requires respirator use, including but not limited to hazardous waste, asbestos or lead, meet the requirements of 29 CFR 1910.120/1926.65 (hazardous waste), 29 CFR 1910.1001/1926.1101 (asbestos), 29 CFR 1910.1025/1926.62 (lead). The Offeror also certifies that Offeror's employees will meet the provisions of American National Standards Institute Standard Z88.2 for training, medical surveillance, and respiratory protection. These requirements include, but are not limited to, the following items:

1. The Offeror's employees have been examined by a licensed physician within the last 12 months and have been determined to be physically able to perform the Work, and use the respiratory and other protective equipment required for this assignment;
2. The employees have received health and safety training for working in environments with known and unknown hazards;
3. The Offeror has established and is maintaining a respiratory protection program that complies with the provision of 29 CFR 1910.134; and
4. The Offeror maintains appropriate surveillance of the work area conditions and degree of employee exposure or stress.

The Offeror further certifies that only respirators approved or accepted by NIOSH/MSHA will be used by the Offeror's employees; that each of the Offeror's employees has been properly fitted to the respirators provided by the Offeror, including a test of the face-to-face piece seal; that the Offeror has provided its employees with written procedures covering safe use of respirators in dangerous atmospheres; and that the Offeror has established a program for inspection, maintenance, and care of the respirators.

The Offeror further certifies that all workers engaged on the project in handling or managing hazardous waste as defined in 40 CFR 261, are trained and certified as required under 40 CFR 262.34 and 265.16 and workers engaged in handling or otherwise preparing hazardous waste and hazardous materials for transportation are trained and certified as required under 49 CFR 172.704.

The Offer agrees to submit to KEMRON applicable certifications and records demonstrating compliance prior to starting work if requested.

<b>NAME AND ADDRESS OF OFFEROR</b>	<b>NAME OF SIGNER</b>
	<b>TITLE OF SIGNER</b>
<b>OFFEROR</b> <i>(Signature of person authorized to sign)</i>	<b>DATE</b>



**Safety Data**

Does your firm have a Standard Operating Procedure for Safety? \_\_\_\_\_ Yes \_\_\_\_\_ No

Does your firm have a Policy Letter dealing with Safety? \_\_\_\_\_ Yes \_\_\_\_\_ No

What was your accident rate for last year? IIR: \_\_\_\_\_ EMR: \_\_\_\_\_

What was your accident rate for this year? IIR: \_\_\_\_\_ EMR: \_\_\_\_\_

Has your firm, in the last three years, received a Notice of Violation from:

- OSHA (or state and local equivalent) \_\_\_\_\_ Yes \_\_\_\_\_ No
- DOL (or state and local equivalent) \_\_\_\_\_ Yes \_\_\_\_\_ No
- EPA (or state and local equivalent) \_\_\_\_\_ Yes \_\_\_\_\_ No
- DOT (or state and local equivalent) \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes to any of the above entities, please explain.

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**Quality Control Data**

Does your firm have a Standard Operating Procedure for Quality Control? \_\_\_\_\_ Yes \_\_\_\_\_ No

Does your firm have a Policy Letter dealing with Quality Control? \_\_\_\_\_ Yes \_\_\_\_\_ No

**Past Performance Data**

Please provide the following data for three projects for similar work performed within the past 12 months.

	1	2	3
Customer			
Contact			
Phone Number			
Total Contract Value			

Have you previously worked with KEMRON? \_\_\_\_\_ Prime \_\_\_\_\_ Subcontractor

Identify project name(s): \_\_\_\_\_

Years in business under your present business name? \_\_\_\_\_

Years' experience in the type of work involved in Exhibit I: \_\_\_\_\_ Prime \_\_\_\_\_ Subcontractor

Have you ever failed to complete any work awarded to you? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, where and why?

---

On a typical project, what percent of the work is completed by:

Own Forces: \_\_\_\_\_ Subcontract: \_\_\_\_\_

Please provide names and addresses for all subcontractors or suppliers you plan to use on this job.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Schedule:**

In the last three years has your firm:

Failed to meet a contract milestone or completion date	_____ Yes	_____ No
Been issued a cure notice	_____ Yes	_____ No
Been terminated for default	_____ Yes	_____ No
Been assessed Stipulated or Liquidated Damages	_____ Yes	_____ No

If you answered yes to any of the above questions, please detail the circumstances:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any facts or circumstances that may adversely affect the schedule? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_

Have you, in the last 3 years, been reported to the Better Business Bureau? \_\_\_\_\_ Yes \_\_\_\_\_ No

**Equipment Availability:**

Equipment is owned and available to perform the work in Exhibit I: \_\_\_\_\_ Yes \_\_\_\_\_ No

If no, please detail your plan to obtain them: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Financial Capability/Accountability:**

Please provide your annual revenue for the last three years:

2012: \$ \_\_\_\_\_ 2011: \$ \_\_\_\_\_ 2010: \$ \_\_\_\_\_

Location where financial records are kept: \_\_\_\_\_

Accounting system capable of segregating and retaining costs, if required? \_\_\_\_\_ Yes \_\_\_\_\_ No

In the past three years has your firm been unable to complete a contract according to the prescribed scope and schedule due to working capital or cash flow constraints? \_\_\_\_\_ Yes \_\_\_\_\_ No

I hereby certify that the information provided in this form is correct and current. I understand that falsification of any of this information is grounds for immediate termination of any subcontract with KEMRON.

<b>NAME AND ADDRESS OF OFFEROR</b>	<b>NAME OF SIGNER</b>
	<b>TITLE OF SIGNER</b>
<b>OFFEROR</b> ( <i>Signature of person authorized to sign</i> )	<b>DATE</b>



## SUBCONTRACTOR SAFETY PERFORMANCE QUESTIONNAIRE

*Subcontractors shall complete this form and submit it with their proposal to the KEMRON Contract Administrator. The information provided on this form will be reviewed as part of the selection criteria. Please provide the requested information in as complete a form as possible to facilitate our review and evaluation.*

<b>Project Name:</b> _____	<b>Project #:</b> _____
<b>Project Manager:</b> _____	
Name of Subcontractor: _____	
Address of Subcontractor: _____	
Contact Name: _____	
Phone Number: _____	
Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) Code: _____	
Date: _____	

1. Use your OSHA 200/300 logs to record the number of injuries and illnesses for the last three years. Please note that KEMRON requires all subcontractors to provide incident statistics, even though certain companies may not be statutorily required to keep OSHA 200/300 logs.

<u>YEAR</u>	_____	_____	_____
a. Number of Fatalities	_____	_____	_____
b. Lost Work Day Incident Rate <sup>1</sup>	_____	_____	_____
c. OSHA Recordable Incident Rate <sup>2</sup>	_____	_____	_____
d. Number of Hours Worked	_____	_____	_____
e. Total Number of Employees on Your Payroll	_____	_____	_____
<b>f. Attach a copy of your OSHA 200/300 logs for the last three years.</b>			

<sup>1</sup> The following formula is used for calculating the **Lost Work Day Incident Rate:** =  $\frac{\text{Number of Lost Work Day Cases} \times 200,000}{\text{Number of Hours Worked}}$

<sup>2</sup> The following formula is used for calculating the **OSHA Recordable Incident Rate:** =  $\frac{\text{Number of OSHA Recordable Cases} \times 200,000}{\text{Number of Hours Worked}}$

2. List your company's Worker's Compensation (WC) Experience Modification Rate (**EMR**) for the three (3) most recent years:

<b>Year</b>	<b>Interstate</b>	<b>Intrastate</b>
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
<b>d. Provide a letter from your WC insurance carrier certifying the above EMRs.</b>		
<b>e. If your WC carrier has not issued your company an EMR because you have not accrued enough WC costs, provide a copy of your WC Loss Run (available from your WC carrier).</b>		
<b>f. If your current EMR is greater than 1.0, provide a written explanation of the safety methods that are being implemented by your company to reduce this rate.</b>		
<b>g. Attach a copy your current insurance certificate and proof of worker's compensation coverage.</b>		



10.	Does your company have a program in place to discipline workers that perform unsafe work practices? <input type="checkbox"/> <b>If box checked, please provide as attachment</b>	Yes ___	No ___
11.	Does your company have written Accident Investigation Procedures? <input type="checkbox"/> <b>If box checked, please provide as attachment</b>	Yes ___	No ___
12.	Does your company currently maintain a program in compliance with applicable state "Right to Know" laws and the OSHA Hazard Communication Standard? <input type="checkbox"/> <b>If box checked, please provide as attachment</b>	Yes ___	No ___
13.	Does your company currently maintain an Accident Prevention Program in compliance with applicable state OSHA regulations? (Required for Alaska, California, Minnesota, Nevada and North Carolina) <input type="checkbox"/> <b>If box checked, please provide as attachment</b>	Yes ___	No ___ N/A ___
14.	Does your company implement a medical surveillance program for employees that work on hazardous waste sites or with hazardous chemicals (i.e., lead, asbestos, benzene, arsenic, formaldehyde, etc.)? <input type="checkbox"/> <b>If box checked, please provide as attachment</b>	Yes ___	No ___ N/A ___
15.	Does your company hold "tailgate/toolbox" safety meetings? b. If yes, how often? _____ <input type="checkbox"/> <b>If box checked, please provide sample copy(s)</b>	Yes ___	No ___
16.	Does your company have a written Alcohol and Substance Abuse Program? If yes, does it include the following?	Yes ___	No ___
a.	5-panel and alcohol substance testing?	Yes ___	No ___
b.	Pre-employment/pre-job assignment testing (within 30 days of pre-job assignment)?	Yes ___	No ___
c.	Post-accident drug and alcohol testing?	Yes ___	No ___
d.	Random testing ?	Yes ___	No ___
e.	Reasonable suspicion drug and alcohol testing?	Yes ___	No ___
	<input checked="" type="checkbox"/> <b>If box checked, please provide program as attachment.</b>		
17.	Has your company worked for KEMRON in the past three years? If so, what year and what project manager were you working for? Year: _____ Project Manager: _____	Yes ___	No ___
18.	The undersigned warrants and represents the data provided in this document is accurate in all respects. Name of Firm: _____ Completed by: _____ Signature: _____ Title: _____ Date: _____		
<b>KEMRON USE ONLY</b>			
<b>Review</b>			
Reviewed by: _____ Date: _____			
Acceptable: Yes ___ No ___ If no, please forward Questionnaire to HS&E Manager for review.			
<b>HS&amp;E Manager Review (only required if unacceptable)</b>			
Reviewed by: _____ Date: _____			
Additional level of planning and operational oversight required: _____			
<b>H&amp;S Database Administrator</b>			
Entered into database by: _____ Date: _____			



# SERVICES AGREEMENT

Agreement No.	Date of Agreement
Amendment No.	Date of Amendment
Project No.	
<i>The above Agreement No., Amendment No., and Project No. and KEMRON tax identification no. 11-2393978 must appear on all invoices, packing lists, cartons and correspondence related to this agreement.</i>	

PRIME CONTRACTOR				SUBCONTRACTOR				OWNER			
KEMRON Environmental Services, Inc.											
Company Name				Company Name				Company Name			
1359A Ellsworth Industrial Boulevard											
Address				Address				Address			
Atlanta		GA	30318								
City		State	Zip	City		State	Zip	City		State	Zip
Attention / Contact:		John Mount		Attention / Contact:				Attention / Contact:			
Tel.	404.636.0928	Fax	404.636.7162	Tel.		Fax		Tel.		Fax	
Email	jmount@kemron.com	Tax ID #	11-2393978	Email		Tax ID #		Email		Tax ID #	

**SCOPE OF SERVICES**

Support on ERRS Region II Contract

**AGREEMENT PRICE AND PAYMENT TERMS**

**SPECIAL STIPULATIONS**

**INSURANCE REQUIREMENTS**

**Attach subcontractor's certificate of insurance. (See attached Standard Terms & Conditions, ¶¶ 3.10,7.6)**

The attached Standard Terms and Conditions and all other exhibits, addenda and attachments referenced above are an integral part of this Agreement. By signing below, the undersigned agree to be bound by all of the terms and conditions set forth or identified on this page (including the Standard Terms and Conditions and any other exhibits, addenda or attachments referenced herein and therein, all of which are hereby expressly incorporated herein).

KEMRON Authorized Signature		Name (printed)		Title		Date Signed	
Subcontractor Authorized Signature		Name (printed)		Title		Date Signed	

The following is for KEMRON internal use only and is not part of the Agreement

PERIOD OF PERFORMANCE (START AND COMPLETION)	CUSTOMER ACCOUNT NO.	VENDOR NO.	PAYMENT TERMS	CERTIFIED FOR NATIONAL DEFENSE

**MASTER CONTROL SHEET**

**STANDARD TERMS AND CONDITIONS  
TO SERVICES AGREEMENT**

**Note: No changes should be made in these terms and conditions. All change requests must be included in the "Special Stipulations" section on the cover sheet of this agreement. KEMRON will not accept nor review any changes that are handwritten or marked directly in these terms and conditions.**

**ARTICLE 1.0 DEFINITIONS**

As used in the Agreement, the following terms shall have the following meanings:

"Agreement" or "Services Agreement" means the Services Agreement to which these Standard Terms and conditions are attached and incorporated, together with all exhibits, addenda and other attachments expressly referenced and incorporated therein.

"Kemron" means Kemron Environmental Services, Inc.

"Subcontractor" means the party identified as such on the Master Control Sheet.

"Owner" means the party identified as "Owner" on the Master Control Sheet.

"Work" means the services and work described in "Scope of Services" on the Master Control Sheet, including any exhibits, addenda and other attachments referenced therein.

"Master Control Sheet" means the first page of the Services Agreement, at the base of which is printed "MASTER CONTROL SHEET."

"including" means including, without limitation.

**ARTICLE 2.0 ADDITIONAL PAYMENT TERMS**

**2.1 Payments**

On or before the date specified by KEMRON, Subcontractor will submit to KEMRON a documented payment request consistent with the terms of this Agreement covering progress on the Work during the payment period in question. KEMRON will pay Subcontractor the approved invoice amount less any retainage specified in Kemron's agreement with Owner or in this Agreement within 15 days following receipt of payment from Owner. Estimated quantities for which partial payments have been made are subject to correction on the final payment request. Final payment will be made within 15 days of receipt of said payment from Owner, provided Work has been completed to the satisfaction of KEMRON and Owner and all other provisions of this Agreement are fulfilled. Payment shall not constitute acceptance of defective, deficient or incomplete Work. Kemron's liability to Subcontractor is subject to, conditioned upon and limited to receipt of corresponding payment from Owner.

**2.2 Liens or Claims**

Subcontractor will promptly pay for all services, labor, materials, and equipment used or employed in the Work and will maintain the materials, equipment, premises, and other subject matter hereof free and clear of mechanics or materialmens liens. If KEMRON has reason to believe that Subcontractor has not paid labor, material or other obligations incurred in performing the Work, KEMRON may take any steps it deems necessary to assure proper payment, including issuing joint checks. As a condition of final payment, or as otherwise

requested by KEMRON from time to time, Subcontractor will furnish as part of its payment request a certification that all of Subcontractor's obligations with respect to the Work have been satisfied and shall supply releases or lien waivers from its subcontractors and material suppliers.

**ARTICLE 3.0 OBLIGATIONS OF SUBCONTRACTOR**

**3.1 Independent Contractor**

Subcontractor shall perform all Work as an independent contractor and will not be considered as an agent or employee of KEMRON or Owner. Subcontractor shall be responsible for and shall fulfill all matters and obligations pertaining to its laborers, including compensation, benefits, and payroll taxes.

**3.2 Obligations Derivative; Communications**

Subcontractor binds itself to KEMRON and to Owner as intended beneficiary under this Subcontract in the same manner and to the same extent as KEMRON is bound to Owner under the agreement with Owner ("Contract with Owner"). Subcontractor acknowledges that a copy of the Contract with Owner was made available for review by Subcontractor before execution of this Agreement and has been reviewed by Subcontractor to its satisfaction. Notwithstanding anything herein to the contrary, Subcontractor shall not communicate directly with Owner and shall instead direct all communications to Owner through KEMRON.

**3.3 Indemnification**

To the maximum extent permitted by law, Subcontractor shall indemnify KEMRON, Owner, and their officers, directors, subsidiaries, affiliates, agents and employees ("Indemnified Persons") from any and all claims, lawsuits damages, losses, costs, and expenses, including litigation expenses and attorneys' fees, suffered or incurred by Indemnified Persons and attributable to, caused by, arising out of or resulting from, or alleged to be attributable to or caused by or to have arisen out of or resulted from, the Work or performance of the Work, including any act or omission or breach (including breach of this Agreement) of or by Subcontractor or anyone for whose acts Subcontractor may be liable. The foregoing will not apply to the extent the lawsuits, claims, damages, losses, costs, or expenses are caused by the sole negligence of Indemnified Persons, but shall otherwise apply including to the extent caused by the concurrent fault or negligence of Indemnified Persons and Subcontractor.

**3.4 Permits, Licenses, Laws, and Regulations**

Subcontractor shall obtain and pay for all required permits and licenses and shall comply with all applicable codes, standards, laws, ordinances, rules, regulations, best industry practices, and KEMRON and Owner instructions in effect during the term of this Agreement, including those regarding tax, the environment, labor, equal employment opportunity and affirmative action. Subcontractor will conduct itself ethically at all times and avoid any conflict of interest.

**3.5 Safety; Protection of Work**

Prevention of accidents on or near the Work is Subcontractor's responsibility. Subcontractor shall take all necessary precautions to

assure the safety of all persons and property during performance of the Work and will protect the Work and all persons and all property from damage or injury caused by Subcontractor's operations and any hazardous or toxic substances involved or encountered. Upon request of KEMRON, Subcontractor shall prepare and implement a safety plan reasonably acceptable to KEMRON.

### **3.6 Access to Records**

Subcontractor will maintain accounting records to substantiate all invoiced amounts (including unit price quantities and cost reimbursable amounts), and shall make those records available for examination by KEMRON while this Agreement is in effect and for a period of three years after Subcontractor's final payment.

### **3.7 Suspension of Work**

Subcontractor shall suspend and resume the Work upon written notice from KEMRON to do so. After resumption of Work, the parties will agree to an appropriate extension of time, provided the reason for suspension is not attributable in any way to Subcontractor's act, omission, fault, breach or nonperformance.

### **3.8 Warranties and Completion; Ownership**

Subcontractor warrants that (i) all materials and equipment furnished under this Agreement will be new, unless otherwise specified, and will be of good quality, in conformance with the requirements of this Agreement, and free from defective workmanship and materials, and (ii) the standard of care applicable to services hereunder will be the degree of skill and diligence applicable to best industry practices. Warranties shall commence on the date of Substantial Completion of the Work or a designated portion of it (defined below). Subcontractor agrees to correct all of the Work which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion or for a longer period of time as may be required by specific warranties stated elsewhere in this Agreement. Substantial Completion of the Work, or a designated portion of it, occurs on the date when all of the objectives and requirements of this Agreement have been met. All Subcontractor's Work, workproduct, developments and inventions hereunder and information described in paragraph 3.11 shall constitute works for hire, all right, title and interest in which shall be vested in KEMRON and Owner.

### **3.9 Drug Policy**

To assure a safe and productive work site, KEMRON prohibits the use, possession or distribution of Prohibited Articles on the Work site. Prohibited Articles include illegal and unauthorized drugs, alcoholic beverages, drug paraphernalia, firearms, marijuana, narcotics and all other drugs not prescribed by a licensed physician for use by the person possessing them and prescribed drugs which may adversely influence performance or behavior. KEMRON may conduct reasonable searches, including random searches, of Subcontractor's employees and employees of its subcontractors and suppliers. Any employee of Subcontractor, its subcontractors or suppliers found to possess a Prohibited Article, under the influence of a Prohibited Article, or refusing to consent to a reasonable search by KEMRON may, in KEMRON's sole discretion, be immediately removed from the Work site and denied future access to the site. Subcontractor agrees to be bound by the terms of KEMRON's drug policy, a copy of which shall be furnished to Subcontractor, and will arrange to bind its subcontractors and suppliers and their employees and agents.

### **3.10 Insurance**

Subcontractor shall maintain and keep in force insurance coverage with reputable and financially sound carriers consistent with industry standards and best practices (including appropriate tail coverage) and

such other coverage as is reasonably requested by KEMRON, and shall name KEMRON and Owner as additional insured and/or loss payee, as appropriate. Policies representing such insurance shall expressly provide for waiver of subrogation and written notice to KEMRON before such policies can be terminated or expire, and Subcontractor shall furnish KEMRON evidence of coverage upon request. Without limiting the foregoing, at a minimum, Subcontractor shall maintain workers' compensation insurance in the statutory amount and employer's liability insurance in an amount not less than \$500,000 for all employees engaged in the Work; comprehensive automobile and vehicle liability insurance covering claims for injuries to all persons and damages to all property, including on-site and off-site operations and owned, non-owned and hired vehicles, in an amount not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate; commercial general liability insurance in an amount not less than \$5,000,000 per occurrence and in the aggregate; when applicable, professional liability insurance in an amount not less than \$1,000,000 per occurrence and in the aggregate; and when applicable, pollution liability in an amount not less than \$5,000,000 per occurrence and in the aggregate.

### **3.11 Confidentiality**

Subcontractor shall strictly maintain the confidentiality of, shall not copy, reproduce, use or disclose except for the purpose of this Agreement, and shall return to KEMRON at the termination of this Agreement any and all drawings, specifications, calculations, field notes, pricing information, estimates, the terms and existence of this Agreement, the Work, the Contract with Owner and the related business relationships, data, information or workproduct (not rightfully generally known to the public) disclosed to, acquired by or developed by Subcontractor in connection with this Agreement. These obligations shall continue from the date of this Agreement until five (5) years after completion of the Work provided that in the case of a trade secret, these obligations shall continue thereafter for so long as the item as matter in question remains a trade secret.

## **ARTICLE 4.0 DIFFERING SITE CONDITIONS**

Subcontractor will promptly, and before such conditions are disturbed, notify KEMRON in writing of (a) subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or (b) physical conditions differing materially from those ordinarily encountered, including asbestos, and generally recognized as inherent in the Work. If previously unidentified hazardous wastes or conditions are encountered, Subcontractor shall immediately stop work and notify KEMRON. If the conditions do materially differ and cause an increase or decrease in Subcontractor's cost of, or the time required for, performing any part of the Work, KEMRON will, to the extent received by KEMRON from Owner, make an equitable adjustment in compensation payable to Subcontractor.

## **ARTICLE 5.0 CHANGES, DELAYS**

### **5.1 Changes**

Without notice to sureties, and without invalidating this Agreement, KEMRON may direct Subcontractor in writing to make changes or additions to or deletions from the Work. Adjustment, if any, in the compensation or performance schedule resulting from such changes shall be set forth in a change order reasonably acceptable to KEMRON, provided Subcontractor promptly notifies KEMRON of its claim for adjustment. Subcontractor will proceed with performance of the Work pending resolution of any claim for adjustment.

## **5.2 Delay**

If Subcontractor is delayed in the completion of the Work by any circumstance for which KEMRON obtains a time extension or additional compensation under the Contract with Owner, the compensation or performance schedule of Subcontractor may be adjusted as reasonably determined by KEMRON.

## **ARTICLE 6.0 DEFAULT; TERMINATION**

### **6.1 Failure of Performance**

If Subcontractor fails to correct contractual deficiencies within three working days from receipt of KEMRON's written notice to do so, then KEMRON, without prejudice to any other right or remedies, shall have the right to take whatever steps it reasonably deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor.

### **6.2 Termination for Default**

KEMRON may, by written notice, terminate the whole or any part of this Agreement if Subcontractor fails to perform any of the provisions of this Agreement or fails to make progress so as to endanger timely completion or, in the opinion of KEMRON, becomes financially or legally incapable of completing the Work and does not correct any of the foregoing to KEMRON's reasonable satisfaction within seven days after receipt of notice from KEMRON.

### **6.3 Damages for Default**

If Subcontractor should default in performance of the Work or otherwise commit any act, omission, breach or nonperformance which causes delay to the work under the Contract with Owner, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages, liquidated damages and reasonable attorneys' fees suffered or incurred by KEMRON or for which KEMRON may be liable.

### **6.4 Termination for Convenience**

KEMRON may terminate all or part of this Agreement for its convenience. Subcontractor will be entitled to compensation for Work satisfactorily completed to the date of termination and reasonable costs incurred for demobilization and termination of subcontracts and purchase orders.

## **ARTICLE 7.0 GENERAL PROVISIONS**

### **7.1 Authorized Representatives**

Each party shall designate an authorized representative on-site through whom all communications will be conducted, except in emergency. Subcontractor's representative is authorized to act on its behalf with respect to the Work. All communications between KEMRON and Subcontractor and its agents (except in emergency) will be through the authorized representatives.

### **7.2 Subcontracting and Assignment**

Subcontractor shall not subcontract any portion of the Work or assign any of the duties or rights or any claim relating to this Agreement without KEMRON's prior written consent. This Agreement shall be binding on the heirs, successors and permitted assigns of the parties.

### **7.3 Jurisdiction**

The law of the jurisdiction governing the Contract with Owner shall govern this Agreement. If no governing law is stated in the Contract with Owner, the law of the state of Georgia shall govern.

## **7.4 Dispute Resolution**

If the parties fail to resolve issues by negotiation, claims asserted against KEMRON by the Subcontractor which KEMRON asserts against the Owner or which the Owner asserts against KEMRON shall be decided by the dispute resolution procedure, including mediation and arbitration, specified in the Contract with Owner. Disputes which do not involve a claim by or against the Owner shall be resolved by binding arbitration in Atlanta, Georgia, before a mutually acceptable arbitrator. If the parties are unable to agree on a single arbitrator, each party shall appoint one arbitrator, and the appointed arbitrators shall select a third arbitrator who shall serve as chairperson of the arbitration panel. Rules comparable to the Construction Industry Arbitration Rules of the American Arbitration Association shall govern the proceedings, provided that failure of the arbitrator(s) to comply with the American Arbitration Association rules shall not invalidate the final decision by the arbitrator(s). The final decision of the arbitrator(s) shall be conclusive and binding and a judgment thereon may be entered in any court having jurisdiction.

## **7.5 Taxes**

Subcontractor shall pay all federal, state and local taxes imposed in connection with the Work, this Agreement or any payments hereunder, except for income taxes of KEMRON.

## **7.6 Miscellaneous**

This Agreement may be amended or modified only by a written instrument signed by all of the parties. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if the unenforceable or invalid provision were omitted. Failure or delay of either party to insist upon compliance with any provision hereof will not operate and is not to be construed as a waiver or amendment of the provision or the right of the aggrieved party to insist upon compliance with the provision or to take remedial steps to recover damages or other relief for noncompliance. A waiver of a breach of any provision of this Agreement must be in writing and shall not waive any subsequent breach. Similarly, the restrictions created by this Agreement may be waived in writing by the parties hereto, but any such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other restrictions or rights created hereby. If any action at law or in equity by KEMRON is necessary to enforce the terms of this Agreement, then if KEMRON is the prevailing party, KEMRON shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled. The captions set forth herein are for convenience of reference only and shall not be used in interpreting this Agreement. When used herein, if required by the context, the masculine, feminine, or neuter gender shall include the other two genders, and the singular shall include the plural and vice versa. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and the counterparts together shall constitute but one and the same agreement, which shall be sufficiently evidenced by any one of the original counterparts. KEMRON's remedies hereunder shall be cumulative and in addition to any remedies available at law or in equity.



**Exhibit III – Flow Down Provisions**

**FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)**

This Agreement incorporates the clauses listed below by reference. The clauses in this Section are based on provisions in FAR/EPAAR requirements and are incorporated by reference with the same force and effect as if they were given in full text. Upon request KEMRON will make the full text available. Revisions applicable to these clauses are noted.

Also, the full text of a clause may be accessed electronically at this/these address (es):

- FAR Clauses: <http://www.acquisition.gov/far>
- EPAAR Clauses: <http://www.epa.gov/oamrfpl2/ptod/epaar>

The terms “Government”, and “Contracting Officer” as used in the following clauses shall be deemed to refer to KEMRON and KEMRON’s Subcontract Representative, respectively; the term “Contractor” shall be deemed to refer to Subcontractor; the term “contract” shall mean this Subcontract; and the term “subcontract” shall be deemed to mean lower tier Subcontractor’s subcontract(s). It is intended that the referenced clauses shall apply to Subcontractor in such manner as is necessary to reflect the position of Subcontractor as a subcontractor to KEMRON, to insure Subcontractor’s obligations to KEMRON and to its Client (US Environmental Protection Agency), and to enable KEMRON to meet its obligations under its Prime Contract. The term “FAR” means the Federal Acquisition Regulations and the term “EPAAR” means the Environmental Protection Agency Acquisition Regulations Supplement.

1. APPLICABLE TO ALL ORDERS

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.202-1	Jul 2004	Definitions
52.203-3	Apr 1984	Gratuities - In subparagraph (a)(1), add KEMRON after Government.
52.203-5	Apr 1984	Covenant Against Contingent Fees
52.203-15	Mar 2009	Whistle Blower Protections Under the American Recovery and Reinvestment Act of 2009
52.204-11	Mar 2009	American Recovery and Reinvestment Act – Reporting Requirements
52.215-2 Alt I	Mar 2009	Audit and Records Negotiation
52.215-19	Oct 1997	Notification of Ownership Changes
52.222-21	Feb 1999	Prohibition of Segregated Facilities
52.225-3	Jan 1994	Buy American Act—Supplies
52.225-11	Oct 1996	Restrictions on Certain Foreign Purchases
52.227-14	Jun 1987	Rights in Data-General, Alternate II (Jun 1987) , Alternate III (Jun 1987), Alternate V (June 1987)
52.227-16	Jun 1987	Additional Date Requirements
52.227-17	Jun 1987	Rights in Data-Special Works
52.232-23	Jan 1986	Assignment of Claims
52.242-1	Apr 1984	Notice of Intent to Disallow Costs

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.242-3	May 2001	Penalties for Unallowable Costs
52.252-6	Apr 1984	Authorized Deviations in Clauses
52.253-1	Jan 1991	Computer Generated Forms

2. APPLICABLE TO ALL ORDERS OVER \$2,500

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.222-1	Feb 1997	Notice to the Government of Labor Disputes
52.222-3	Jun 2003	Convict Labor
52.222-36	June 1998	Affirmative Action for Workers with Disabilities
52.222-41	Jul 2005	Service Contract Act of 1965 as Amended
52.222-43	Nov 2006	Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Years and Option Contracts)

3. APPLICABLE TO ALL ORDERS OVER \$10,000

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.215-2 Alt I	March 2009	Audit and Records Negotiation
52.222-26	Apr 2002	Equal Opportunity
52.222-35	Sep 2006	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era – and Other Eligible Veterans
52.222-37	Sept 2006	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era – and Other Eligible Veterans

4. APPLICABLE FOR ALL ORDERS OVER \$25,000

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.209-6	Sept 2006	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.219-8	May 2004	Utilization of Small Business Concerns
52.223-3	Jan 1997	Hazardous Material Identification and Material Safety Data Alternate I (Jul 1995)
52.223-6	May 2001	Drug Free Workplace
52.242-13	Jul 1995	Bankruptcy
52.244-5	Dec 1996	Competition in Subcontracting
52.244-6	Mar 2007	Subcontracts for Commercial Items
52.246-25	Feb 1997	Limitation of Liability-Services
52.251-1	Apr 1984	Government Supply Sources

5. APPLICABLE TO ALL ORDERS OVER \$100,000

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.203-7	Jul 1995	Anti-Kickback Procedures
52.203-8	Jan 1997	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

52.203-12	Sept 2005	Limitation on Payments to Influence Certain Federal Transactions
52.204-4	Aug 2000	Printing or Copied Double Sided on Recycled Paper
52.222-4	Jul 1995	Contract Work Hours and Safety Standards Act (Overtime Compensation)
52.223-2	Apr 1984	Clean Air and Water
52.223-14	Aug 2003	Toxic Chemical Release Reporting
52.227-1	Jul 1995	Authorization and Consent in which Government means Government.
52.227-2	Aug 1996	Notice and Assistance Regarding Patent and Copyright Infringement - Government means Government.
52.229-3	Jan 1991	Federal, State and Local Taxes
52.229-5	Apr 1984	Taxes-Contracts Performed in US Possessions or Puerto Rico
52.245-5	May 2004	Government Property (Cost Reimbursement, Time-and-Materials or Labor-Hour Contracts)

6. APPLICABLE TO ALL ORDERS OVER \$500,000

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.215-12	Oct 1997	Subcontractor Cost or Pricing Data-Modifications
52.215-15	Oct 1997	Termination of Defined Benefit Pension Plans
52.215-19	Oct 1997	Notification of Ownership Changes
52.215-39	Mar 1996	Reversion or Adjustment of Plans for Post Retirement Benefits other than Pensions
52.215-40	Feb 1995	Notification of Ownership Changes
52.215-42	Jan 1997	Requirements for Cost or Pricing Data or Information other than Cost or Pricing Data-Modifications
52.219-9	Aug 1996	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, Alternate I (Mar 1996)
52.219-16	Oct 1995	Liquidated Damages - Small Business Subcontracting Plan

7. APPLICABLE TO ALL ORDERS OVER \$1 MILLION

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.222-28	Apr 1984	Equal Opportunity Pre-award Clearance for Subcontracts

8. APPLICABLE TO ALL CONSTRUCTION ORDERS

FAR REF. NUMBER	DATE	CLAUSE TITLE
52.222-7	Feb 1988	Withholding of Funds
52.222-8	Feb 1988	Payrolls and Basic Records
52.222-9	Jul 2005	Apprentices and Trainees
52.222-10	Feb 1988	Compliance with Copeland Act Requirements
52.222-11	Jul 2005	Subcontracts (Labor Standards)
52.222-12	Feb 1988	Contract Termination - Debarment
52.222-13	Feb 1988	Compliance with Davis-Bacon and Related Act Regulations
52.222-14	Feb 1988	Disputes Concerning Labor Standards
52.222-15	Feb 1988	Certification of Eligibility

<b>FAR REF. NUMBER</b>	<b>DATE</b>	<b>CLAUSE TITLE</b>
52.222-16	Feb 1988	Approval of Wage Rates
52.222-23	Feb 1999	Notice of Requirement for Affirmative Action to Ensure Equal Opportunity Compliance
52.225-9	Feb 1999	Affirmative Action Compliance Requirements for Construction
52.225-5	Jan 2005	Buy American Act-Construction Materials
52.225-21	Mar 2009	Required Use of American Iron and Steel , and Other Manufactured Goods-Buy American Act-Construction Materials
52.225-23	Mar 2009	Required Use of American Iron and Steel , and Other Manufactured Goods-Buy American Act-Construction Materials Under Trade Agreements.
52.227-4	Apr 1984	Patent Indemnity-Construction Contracts
52.228-2	Oct 1997	Additional Bond Security
52.228-11	Feb 1990	Pledges of Assets
52.228-15	Nov 2006	Performance and Payment Bonds-Construction
52.236-5	Apr 1984	Materials and Workmanship
52.236-7	Nov 1991	Permits and Responsibilities
52.236-18	Apr 1984	Work Oversight in Cost-Reimbursement Construction Contracts
52.236-19	Apr 1984	Organization and Direction of Work

9. APPLICABLE TO ALL COMMERCIAL ITEMS

<b>FAR REF. NUMBER</b>	<b>DATE</b>	<b>CLAUSE TITLE</b>
52.203-13	Dec 2008	Contractor Code of Business Ethics and Conduct
52.203-15	Mar 2009	Whistle Blower Protections Under the American Recovery and Reinvestment Act of 2009
52.219-8	May 2004	Utilization of Small Business Concerns
52.222-26	Apr 2002	Equal Opportunity
52.222-35	Sep 2006	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era – and Other Eligible Veterans
52.222-36	June 1998	Affirmative Action for Workers with Disabilities
52.222-39	Dec 2004	Notification of Employee Rights Concerning Payment of Union Dues or Fees
52.222-50	Feb 2009	Combating Trafficking in Persons
52.247-64	Feb 2006	Preference for Privately Owned U.S.-Flag Commercial Vessels

This subcontract is also subject to the following Client-specific clauses which are hereby incorporated by reference:

- EPAAR 1552.208-70 (Oct 2000) - Printing
- EPAAR 1552.209-71 (May 1994) - Organizational Conflicts of Interest
- EPAAR 1552.209-73 (May 1994) - Notification of Conflicts of Interest Regarding Personnel
- EPAAR 1552.229-70 (Nov 1989) - State and Local Taxes
- EPAAR 1552.227-76 (May 1994) - Project Employee Confidentiality Agreement
- EPAAR 1552.235-70 (Apr 1984) - Screening Business Information for Claims of Confidentiality
- EPAAR 1552.235-71 (Apr 1984) - Treatment of Confidential Business Information
- EPAAR 1552.237-74 (Apr 1984) - Publicity
- EPAAR 1552.237-75 (Apr 1984) - Paperwork Reduction Act
- EPAAR 1552.235-79 (Apr 1996) - Release Of Contractor Confidential Business Information
- EPAAR 1552.245-72 (Apr 1984) - Fabrication or Acquisition of Nonexpendable Property

This order is also subject to the following Client-specific clauses which are hereby delineated in full text:

**EP 52.219-110 (Apr 1990) - Utilization of Rural Area Small Business Concerns**

(a) (1) "Rural area small business concern" as used in this clause, means a small business concern that is located and conducts its principal operations in a rural geographic area (county or parish) listed in the Small Business Administration's Listing of Non-Metropolitan Rural Counties by State.

(2) "Small business concern" as used in this clause means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standard in 13 CFR 121.

(b) It is the policy of the Environmental Protection Agency (EPA) (and KEMRON) that rural area small business concerns shall have the maximum practicable opportunity to participate in performing contracts awarded by EPA.

(c) The Subcontractor shall use its best efforts to give rural area small business concerns the opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of this subcontract.

(d) The Subcontractor shall incorporate the substance of this clause in any subcontract that may provide for additional subcontracting opportunities.

**EP 52.219-115 (Jul 1991) - Utilization of Historically Black Colleges And Universities**

(a) It is the policy of the Environmental Protection Agency (and KEMRON) that historically black colleges and universities shall have the maximum practicable opportunity to participate in performing contracts (or subcontracts) awarded by the Agency.

(b) The Subcontractor shall use its best efforts to give historically black colleges and universities the opportunity to participate in any subcontracts awarded to the fullest extent consistent with efficient performance of this subcontract.

(c) The Subcontractor shall incorporate the substance of this clause in any subcontract which may provide for additional subcontracting opportunities.

**EP 52.231-305(Apr 1992) - Limitation on Reimbursement for Rental Equipment**

a) Fixed labor rates apply to all individuals employed under this contract. Fixed equipment rates apply to all equipment items listed in the Schedule. Fixed rates for labor and equipment items apply whether supplied by the prime contractor, team subcontractors, third-party subcontractors or short-term lease/rental agreement.

b) If it is determined by KEMRON or the USEPA to be in the best interest of the Government to suspend this limitation, reimbursement for rented/leased equipment may be at a cost which exceeds the fixed rate. Such consideration shall be made on a case-by-case basis. A request for approval shall be made by the Subcontractor through KEMRON in writing to the USEPA, in advance of charging the higher rate. Written documentation supporting the request shall include the description of the item, CLIN number, proposed cost, an explanation why the Subcontractor is proposing to rent/lease the equipment, and such other information as may be considered necessary to evaluate the proposal.

c) In the event of an emergency, the USEPA through KEMRON, may approve a higher rate with written documentation to be forwarded by the Subcontractor within ten (10) calendar days thereafter. In addition to the information required in the preceding paragraph, details on the nature of the emergency shall be included.

d) The final determination on reimbursement for a cost for rented/leased equipment for which the subcontract includes a fixed rate shall be the responsibility of the USEPA, except in an emergency during which the OSC's approval (through KEMRON) shall be accepted by the contracting officer until the emergency situation is stabilized provided the required documentation is submitted to the contracting officer within the time specified above.

- (e) In determining the allow ability of reimbursement for the cost of rented/leased equipment for which the contract includes a fixed rate and which results in a cost in excess of the fixed rate, the Government may consider incremental charges incurred in connection with rental equipment for excessive usage and peak seasons during which time all of the subcontractor's owned equipment is dedicated to other EPA sites. The Government may also take into consideration instances where the subcontractor's equipment has been in use on a long-term basis on non-EPA jobs before being required by EPA and the length of the EPA job.

### **Confidentiality of Information**

Any data that is generated or obtained during subcontract performance by the Subcontractor and/ any subcontractors shall be considered confidential and shall not be disclosed to anyone other than Environmental Protection Agency employees or to the DOJ, or to KEMRON, without the prior written approval of the EPA Contracting Officer through KEMRON, nor shall any such data be used for any other purpose except in connection with this subcontract. Any data generated or obtained during subcontract performance shall be delivered to the Government/EPA and KEMRON at the request of KEMRON.

### **Government Rights Under The Comprehensive Environmental Response, Compensation And Liability Act (CERCLA)**

The award of this subcontract does not constitute a waiver of the Government's right to bring action against any person, or persons, including the Subcontractor, for liability under any provision of CERCLA. Furthermore, if the Subcontractor is determined to be liable under Section 107 of CERCLA, the Government may set-off the amount of any such liability against amounts otherwise due and payable under this subcontract.

The disclosure of any potential conflicts of interest as required in the "Conflict Of Interest" clauses of this subcontract shall not be construed or interpreted as an admission by the Subcontractor of any liability under CERCLA. Further, nothing contained within this subcontract shall be deemed, construed and/or interpreted as a waiver by the Subcontractor of any defenses it may have or may wish to assert in any action by the Government under CERCLA.

### **Retention and Availability of Subcontractor Files**

(a) This subcontract contains the Federal Acquisition Regulation Clause 52.215-2 "Audit/Negotiation" wherein the Subcontractor is required to maintain and make available to the EPA Contracting Officer or representative of the EPA Contracting Officer (in accordance with FAR Subpart 4.7 "Subcontractor Records Retention") at its office at all reasonable times the books, records, documents, and other evidence relating to this subcontract including personnel utilization records, site records, and accounting procedures and practices sufficient to reflect properly all costs claimed to have been incurred under this subcontract. Such files shall be made available for examination, audit or reproduction.

(b) The Subcontractor is advised that the Government may file suit against potential responsible parties for costs incurred relative to site related cleanup activities. In such proceedings, the Subcontractor's cost and performance records may become an integral part of the Government's case.

(c) Accordingly, due to the extended nature of court proceedings and EPA audit requirements, the Subcontractor shall make available to the Government and only to the Government the records described in (a) and (b) above and in the Audit clause for a period of ten (10) years after final payment under the subcontract. (FAR 4-703 (b)(1)).

(d) In addition, the Subcontractor shall make available to the Government and only to the Government the records relating to any appeals, litigation or the settlement of claims with third parties which relate to this subcontract (i.e. cost recovery) until such appeals, litigation or claims are disposed of.

(e) The Subcontractor shall not destroy original records relating to the subcontract until (1) all litigation involving the records has finally been settled and approval is obtained from the EPA Contracting Officer, or (2) ten (10) years have passed from the date of final payment and no litigation involving the records as been instituted and approval of the EPA Contracting Officer is obtained. In no event should individual records be destroyed if litigation is in process or is pending related to such records.

(f) The Government may, in support of litigation cases, have the need for the Subcontractor to research and make available such records in a form and manner not normally maintained by the Subcontractor. Such effort shall be deemed to be within the scope of work under this subcontract. If this effort is required during subcontract performance, a negotiated supplemental agreement will be issued under the subcontract. If this effort is required after performance of this subcontract, a separate negotiated procurement action may be instituted with the Subcontractor.

(g) The final invoice (completion voucher), submitted after physical completion of the subcontract within the stated period of performance, will represent the final claim under the subcontract.

#### **Use of ERRS Company-Owned Laboratories and Treatment Facilities**

The OSC, in conjunction with the Contracting Officer, shall determine the appropriateness of using contractor-owned laboratories. Such determinations need to be based on competition, site safety concerns and the potential for an actual or apparent conflict of interest on the part of the contractor.

There are certain situations where the use of a contractor owned laboratory and/or treatment facility would not be appropriate, such as in determining the extent of contamination and/or estimating volumes of material to be disposed. However, under emergency response conditions, there may be instances where real time analytical support services from the contractor owned laboratories is necessary and does not present a conflict of interest. Situations of this nature would be the real time analysis of unstable hazardous waste materials to provide OSCs with the necessary handling information to protect the public health and environment as well as site personnel.