

**PROCUREMENT  
RULES  
&  
REGULATIONS**

**31**            **Public Works and Property**  
**023**           **Procurement and Sale**

**Chapter 23;**

**Subchapter 231 Efficient System of Procurement and Supply**

**Subchapter 232 Bureau of Transportation**

**Subchapter 235 Procurement**

**Subchapter 236 Contract Procedure**

**Subchapter 238 Replacement Standards**

**Subchapter 239 Open Market Orders**

**Subchapter 240 Emergency Purchases**

**Subchapter 241 Department of Commerce; Advertising, Promotion, Publicity  
and Public Relations**

**Subchapter 242 Public Works Contracts**

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## PART II. PUBLIC PROPERTY

### *Chapter 23. Procurement and Sale*

#### *Subchapter 231. Efficient System of Procurement and Supply*

##### § 231-1. Acquisition of real property without condemnation

Public acquisition of real property without condemnation; determination of value. The Governor's Exec. Order No. 77 - 1965, issued and filed Mar. 25, 1965 (File No. 364).

#### *Subchapter 232. Bureau of Transportation*

##### § 232-1. Scope of regulations

These regulations prescribe policies and procedures governing the acquisition, use, maintenance, repair and disposition of motor vehicles under the jurisdiction of the Bureau of Transportation established by Act No. 1431 (Sixth Legislature of the Virgin Islands—Regular Session 1965) [3 V.I.C. § 214a and 31 V.I.C. §§ 206-208], and define the motor vehicles and related services which shall be provided by the motor pool to meet efficiently the authorized requirements of the participating agencies for local transportation of Government personnel and property. Such services for the most part will be provided by the Government. However, it may at times be furnished through the use, under rental or other arrangements, of motor vehicles or facilities or private fleet operators, taxicab companies, other local carriers, or combinations thereof. The centralized motor vehicle operation is hereinafter referred to as the motor pool.

##### § 232-2. Financing

Within the provisions of Act 1431, as amended by Act 1476 [3 V.I.C. § 214a and note], a Revolving Fund shall be available for use by or under the direction and control of the Department of Property and Procurement for paying all elements of cost incident to the establishment, maintenance, and operation of the motor pool.

##### § 232-3. Agency compliance

Failure to comply with these regulations or with the standard operation procedures issued in connection with the operation of the motor pool will be reported by the Department of Property and Procurement to the head of the agency concerned, with a request for immediate correction.

**§ 232-4. Motor vehicles exempted from the provisions of regulations**

(a) **General.** Except as otherwise provided, all Government motor vehicles acquired for official purposes which are stored, garaged, or operated within the boundaries of the motor pool shall be consolidated into and operated under the control of such motor pool.

(b) **Exemptions.** As provided for in section 3 of Act 1431 (Sixth Legislature—Regular Session 1965) [31 V.I.C. § 206] and section 7 of Act 1486 (Sixth Legislature—First Special Session 1965) [31 V.I.C. § 201 note], vehicles belonging to the following are exempted from the regulations governing the motor pool: Office of the Governor, Government Secretary, Legislature, Department of Public Works, Public Safety and Health, the former Federal properties at Submarine Base and the Marine Air Facilities.

**§ 232-5. Problems involving service or cost**

Executive agencies affected by the motor pool for which the Chief of Transportation is responsible may bring problems of service and cost to the attention of the Commissioner of Property and Procurement who shall be responsible to see that such problems receive proper attention.

**§ 232-6. Notification to agencies**

The Bureau of Transportation shall advise all agencies of the services available, the methods and procedures to be followed in obtaining services, and shall give ample notice of any changes therein.

**§ 232-7. Services available to agencies**

To the extent justified by the work requirements of using agencies, motor pool services shall be available as follows:

(a) Motor vehicles (1) on trip or daily assignment; (2) indefinite assignment; and (3) commercially rented for short term use;

(b) Other related services, including servicing and storage of motor vehicles.

**§ 232-8. Means of obtaining service**

(a) Any participating government agency, bureau, or activity may obtain service from the motor pool by any of the following means:

(1) A written request such as a letter, memorandum, teletype, requisition, purchase order, or similar document: Provided that such request furnished a complete billing address;

(2) An oral request, placed in accordance with an authorization the agency employing the requester has furnished the motor pool system, such as the following:

(A) A list of names of employees or officials who may request services.

(b) Agencies or activities having seasonal or unusual requirements for motor vehicles or motor vehicle services shall inform the motor pool system thereof as far in advance as possible. Normally, such advice shall be given not less than thirty (30) days in advance of the need.

(c) **Reimbursement.**

(1) The using agency will be billed for interagency motor pool service provided for under this section at rates fixed by the Chief of Transportation and approved by the Commissioner of Property and Procurement. Such rates are designed to recover applicable costs and to reflect equitably the differential in the operating cost of the various types and classes of vehicles. Rates will be reviewed annually to determine that reimbursement therefrom is sufficient to recover applicable costs, and that rates for types and classes of vehicles or services are equitable.

(2) Rates or revisions thereto will be published currently by the Bureau of Transportation and made available to all using activities.

(3) All rates must bear the approval of the Commissioner of Property and Procurement.

**§ 232-9. Official use of Government motor vehicles**

(a) This section prescribes the requirements governing the use of Government motor vehicles acquired for official purposes and operated by the motor pool established by statute.

(b) It is the responsibility of every official concerned with the use or control of a motor vehicle furnished by the motor pool system to assure that all employees under his supervision who operate or use such a vehicle are fully acquainted with these requirements.

(c) Every employee seeking to drive a motor vehicle controlled by the motor pool system shall be required to have a Virgin Islands operator's license for the type of vehicle to be operated.

(d) Authorized use of motor vehicles is described as follows:

(1) **Purpose.** No vehicle of the Government of the Virgin Islands or any of its departments, agencies, instrumentalities, boards, commissions, and authorities, operating under this motor pool and operated by an officer or employee of the said Government, shall be used for other than official purposes.

(2) **Prohibition.** No officer or employee shall wilfully use, or authorize the use of, a government-owned motor vehicle, whether passenger-carrying or not, for other than official purposes. The use of a government-owned motor vehicle to transport an officer or employee between his domicile and place of employment shall not be deemed an official purpose except in cases of officers or employees engaged in field work, the character of whose duties make such transportation necessary, and then only as to such cases when the same is recommended by the Chief of Transportation and approved by the Commissioner of Property and Procurement.

(3) **Use between domicile and place of employment.** The Commissioner of Property and Procurement may, in the circumstances mentioned in subsection (2) of this section approve the use of a government-owned motor vehicle between the domicile and place of employment of an officer or employee. The authority may not be re delegated and any such approval shall not be transferable.

All requests submitted for approval of the use of a government-owned motor vehicle between the domicile and place of employment should contain a complete statement, explaining the relationship between the officer's or employee's duties and the proposed use of the vehicle, as well as other factors which tend to establish that it is in the best interests of the government to grant the approval requested. Where the request is based on the use of a motor vehicle in emergencies, the nature and probable frequency of the emergencies should be described, and the unacceptability of alternate arrangements should be explained.

The head of each department, agency, instrumentality, board, commissioner, or authority of the government of the Virgin Islands, operating under the motor pool is hereby directed to inform employees under his jurisdiction of these provisions and is charged with the responsibility of seeing that the same is strictly complied with.

The above shall not apply to the Commissioners of the several executive departments even though they are operating under the motor pool.

#### § 232-10. Violations

Penalties for unauthorized use are specified in Act No. 1431, section 5 [31 V.I.C. § 208], are as follows:

“Any official or employee who violates the regulations promulgated under sections 3 or 4 of this Act [31 V.I.C. §§ 206, 207], or the provisions of Executive Order No. 42—1960 [V.I. Reg., Vol. I, No. 4, November, 1960, Pt. I, p. 2] shall be subject to the following penalties to be imposed by the head of the department where employed:

“(a) For the first violation, suspension from duty without pay for a period not to exceed 15 days;

“(b) For the second violation, suspension from duty without pay for a period of not less than 15 days nor more than 30 days;

“(c) For the third violation, dismissal in accordance with the provisions of section 530 of Title 3, Virgin Islands Code.”

#### § 232-11. Notification of violation

(a) When a violation of any of these provisions comes to the attention of the Chief of Transportation, he shall refer this matter to the Commissioner of Property and Procurement who shall advise the official in charge of the agency involved.

(b) If the violation is repeated the Commissioner of the Department of Property and Procurement shall send a full statement of all known facts to the appropriate department head, requesting action under the provisions of Act No. 1431 [3 V.I.C. § 214a and 31 V.I.C. §§ 206-208].

#### § 232-12. Responsibility for investigation of violations

The head of each agency shall be responsible for investigating reports of unofficial use of motor vehicles used by such agency and for appropriate disciplinary action. He shall be joined in such investigation by the Chief of Transportation.

#### § 232-13. Manner of operating vehicles

Any official or employee issued a motor vehicle from the motor pool system shall be responsible for exercising reasonable diligence in the care of the vehicle at all times. Failure to take proper care

of a vehicle may be considered as justification for refusal of further vehicle issuance to such official or employee after reasonable notice to the head of the agency.

**§ 232-14. Storage of vehicles**

(a) Motor pool vehicles shall be stored in facilities which provide protection from pilferage or damage. In the interest of economy, open storage shall be used wherever practicable and feasible.

(b) Whenever motor pool vehicles are stored at other than a designated storage point of the motor pool, the storage cost is the responsibility of the using agency.

**§ 232-15. Maintenance of vehicles**

In order to assure uninterrupted operation of motor pool vehicles, safety and preventive maintenance inspections will be performed at regularly scheduled intervals. Users of motor pool vehicles shall comply with the safety and preventive maintenance instructions of the motor pool.

**§ 232-16. Damage through abuse or negligence**

(a) Whenever a motor vehicle is damaged through abuse, negligence or misuse; or whenever a vehicle is damaged while being operated by a driver under the influence of alcohol or narcotics, the using agency operating the vehicle will be furnished a complete statement regarding the incident and shall be responsible for the damage. All costs resulting from such damage will be billed to the agency operating the vehicle, unless the vehicle is operated by a chauffeur of the motor pool.

(b) Officials or employees responsible for the operation of the motor pool vehicles shall exercise every precaution to prevent accidents. In case of an accident, the employee or official concerned shall comply with the procedures established hereunder.

**§ 232-17. Reporting of accidents**

(a) The operator of a motor pool system vehicle is responsible for notifying the following persons immediately, either in person, or by telephone, of any accident in which the vehicle may be involved:

- (1) The Chief of Transportation;
- (2) The employee's official supervisor;

- (3) Police Division, Department of Public Safety; and
- (4) The Attorney General's Office.

(b) In addition, the vehicle operator shall obtain and record information pertaining to the accident on Standard Form 91, Operator's Report of Motor Vehicle Accident. Only one copy of the Standard Form 91 is required and shall be furnished the vehicle operator's supervisor. The vehicle operator shall also obtain the names, addresses, and telephone numbers of any witnesses and wherever possible have witnesses complete Standard Form 94, Statement of Witness and submit the completed Standard Form 94 and other related information to his supervisor. The vehicle operator shall make no statements as to the accident except to his supervisor or to a Government investigating officer.

(c) Whenever a vehicle operator is injured and cannot comply with the above requirements, the agency to which the vehicle is assigned shall report the accident as required by law, notify the Bureau of Transportation as soon as possible after the accident, and complete and process Standard Forms 91 and 94.

(d) If a vehicle operator fails to report any accident involving a motor pool system vehicle, in accordance with the above, or if he has a record showing a high accident frequency, or showing an abnormally high dollar accident cost, advice to such effect will be provided to the head of his agency, together with a statement that such failure, or poor performance record, is considered by the Virgin Islands Government to be sufficient justification for the agency to suspend the right of the employee to operate or use a motor pool system vehicle.

#### § 232-18. Procedure for investigation of accidents

Every accident involving a motor pool vehicle shall be investigated and a report furnished the Bureau of Transportation.

(a) Where property damage is less than \$100 and no bodily injury is involved, a copy of Standard Form 91 and any other available supporting data shall be submitted as the required report.

(b) Where property damage is \$100 or more or bodily injury is involved, the agency employing the vehicle operator shall investigate the accident within 48 hours after the actual time of occurrence thereof. If an agency has not established investigating procedures, the Department of Property and Procurement will investigate the accident. Also, Property and Procurement may

investigate any accident involving a motor pool vehicle, if deemed necessary. Should such investigation develop additional information, the additional data or facts will be furnished to the using agency for their information.

(c) Two copies of the complete report of the investigation (see section 232-17(b) of this title), including Standard Form 91A, Investigation Report of Motor Vehicle Accident, photographs, measurements, doctor's certificate of bodily injuries, police investigation reports, operator's statement, agency's findings and determinations, witnesses' statements, and any other pertinent data shall be furnished the Bureau of Transportation.

#### § 232-19. Claims in favor of the Government

Whenever there is any indication that a party other than the operator of the motor pool vehicle is at fault, the agency responsible for investigating the accident shall submit all original documents pertaining to the accident and its investigation to the Department of Property and Procurement, Office of the Commissioner. The Commissioner will initiate the necessary action to effect recovery of the Government claim and will provide the using agency with copies of legal papers involved in the action. The Commissioner will also notify the using agency of the introduction of the Government claim and keep said agency informed of the claim's progress and final settlement.

#### § 232-20. Claims against the Government

Whenever a motor pool system vehicle is involved in an accident resulting in damage to the property of, or injury to the person of, a third party, and the third party asserts a claim against the Government based on the alleged negligence of the vehicle operator acting within the scope of his duties, it shall be the responsibility of the agency employing the person who was operating the motor pool vehicle at the time of the accident to cooperate with the Office of the Attorney General to settle the claim administratively to the extent provided by statute.

It shall be the further responsibility of such agency, in the event such administrative settlement cannot be effected, to prepare with the advice of the Office of the Attorney General completely, from an administrative standpoint, the Government's defense of the claim.

If a suit is filed against the Government of the Virgin Islands, the Commissioner will cooperate with and assist the using agency and the Office of the Attorney General in defense of any action against the Virgin Islands Government, or the operator of the vehicle, arising out of the use of a motor pool vehicle.

#### § 232-21. Agency liability

(a) Whenever a motor pool system vehicle is damaged through the negligence or misconduct of the vehicle operator, or through the negligence or misconduct of any other official or employee of the agency employing the vehicle operator, all costs incurred in the removal and repair or, in the case of total loss, the replacement of the vehicle, including travel and other costs attributable to the accident, shall be chargeable to the agency employing the operator thereof.

(b) The basis for determining responsibility for the negligence or misconduct which caused or precipitated the damage to the motor pool vehicle shall be the findings of an investigation conducted by and in accordance with administrative regulations of the agency employing the vehicle operator. If such agency has not established investigating procedures, Property and Procurement will investigate the accident and affix responsibility in accordance with its established procedures and orders. The Chief of Transportation shall be a member of all investigation teams.

(c) If the investigation by Property and Procurement develops additional data it will be furnished to the using agency with a recommendation for its consideration.

#### § 232-22. Accident records

If Property and Procurement records of vehicle accidents indicate that a particular activity has had an unusually high accident frequency rate or a high accident cost per mile, Property and Procurement will furnish the using activity with a report thereof. Corrective action to improve the situation will be requested and Property and Procurement will cooperate in any reasonable manner possible to bring about improved performance.

#### § 232-23. Use and rotation of vehicles

The objective of a motor pool system is to provide efficient and economical motor vehicle and related services to participating agencies. To attain this objective, usage goals and rotation policy

for motor pool vehicles assigned to an agency or activity on a continuing basis are prescribed in these regulations.

(1) To promote the program wherein motor pool vehicles are used to the maximum extent feasible and only a minimum number of vehicles are retained in the inventory to provide necessary service, the following usage objectives are established:

(A) Passenger-carrying vehicles. The average usage objective for passenger-carrying vehicles is a minimum of 3,000 miles per quarter or 12,000 miles per year.

(B) Light trucks and general purpose vehicles. The average usage objective for light trucks and general purpose vehicles is as follows:

(i) Light trucks and general purpose vehicles, 1 ton (12,500 lbs. GVW and under)—10,000 miles per year.

(ii) Trucks and general purpose vehicles, 1½ ton through 2½ ton (over 12,500 lbs. GVW to 17,000 lbs. GVW)—7,500 miles per year.

(C) Heavy trucks and truck tractors. The average usage objective for heavy trucks and tractors is as follows:

(i) Heavy trucks and general purpose vehicles over 3 tons (over 17,000 lbs. GVW)—7,500 miles per year.

(a) Truck tractors—10,000 miles per year.

(D) Other trucks and special purpose vehicles. No usage objective for other trucks and special purpose vehicles is established, but the head of the agency will cooperate with motor pool personnel studying the use of this equipment and taking necessary action to insure that it is fully utilized or returned to the motor pool system.

(2) In order to attain the usage objectives outlined herein, motor pool vehicles assigned on high mileage assignments will be rotated with those of the same type on low mileage assignments. In specific cases where the continuous use of a specific vehicle is essential but its usage does not meet objectives, the motor pool system issuing the vehicle will require the using agency to furnish a written explanation of the need for excluding the vehicle from the rotation program requirements, except in those instances where it is known that the usage requirements or installed equipment make it impractical to rotate the vehicle.

*Subchapter 235. Procurement*

DIVISION 1. SPECIFIC PROVISIONS

§ 235-1. Definitions

For the purposes of this subchapter and unless otherwise indicated, the following terms have the meanings set forth herein:

(1) "Executive agency" means any executive department of the Government of the Virgin Islands or any independent establishment in the executive branch of the Government and/or any instrumentality thereof.

(2) "Procuring activity" means the organizational element of an executive agency which has responsibility for the procurement of personal property and nonpersonal services including construction.

(3) "Contracting officer" means the Commissioner of the Department of Property and Procurement and/or his duly authorized designee.

(4) "Contract" means establishment of a binding legal relation basically obligating the seller to furnish personal property or nonpersonal services (including construction) and the buyer to pay therefor. It includes all types of commitments which obligate the Government to an expenditure of funds and which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder, letter contracts; letters of intent; and orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes modifications.

(5) "Procurement" means the acquisition—and directly related matters—of personal property and nonpersonal services (including construction) by such means as purchasing, renting, leasing, contracting, or bartering, but not by seizure, condemnation, donation, or requisition.

(6) "Negotiation" means the procedure for making contracts without formal advertising.

(7) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes (a) bilateral actions, such as supplemental agreements and amendments, and (b) unilateral actions, such as change orders, notices of termination, and notices of the exercise of an option.

(8) "Procurement item" means any personal property or non-personal services, including construction, alteration, repair, or installation, which is the object of procurement.

## DIVISION 2. METHODS OF PROCUREMENT

### § 235-11. Competition

All purchases and contracts, and all sales of unusable or obsolete personal property, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

### § 235-12. Formal advertising

Contracts for property and services, and sale of unusable and obsolete personal property, shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be in accordance with detailed requirements and procedure set forth elsewhere herein. [See section 235-21 of this subchapter.]

### § 235-13. Negotiation

If the use of formal advertising is not feasible and practicable, purchases and contracts for property, and the sale of unusable and obsolete personal property, may be negotiated in accordance with the detailed requirements and procedures set forth elsewhere herein. [See section 235-21(a) of this subchapter.]

### § 235-14. General requirements

(a) Before taking procurement action, in accordance with this subchapter, the Contracting Officer shall have complied with applicable laws relative to obtaining supplies or services from Government sources and from contracts issued by the General Services Administration or other Federal Agencies. These shall include excess and surplus stocks in the hands of any Federal Government agency, Federal Supply Schedules, General Services Administration Stores Stock, Federal Supply Service Consolidated Purchase Programs, Federal Prison Industries, Inc., and National Industries for the Blind.

(b) Irrespective of whether the procurement of supplies or services are from sources mentioned in subsection (a) is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary

by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

#### § 235-15. Purchase description

(a) Purchase descriptions may be used in the procurement of supplies or services. However, where the use of a formal specification or standard is required, use of supplementary descriptive information which is consistent with the specification or standard is permissible.

(b) Purchase descriptions used in competitive procurement shall not specify a product having features which are peculiar to the product of one manufacturer, producer, or distributor, and thereby preclude consideration of a product of another company, unless it has been determined that those particular features are essential to the Government's requirements, and that similar products of other companies lacking those features would not meet the minimum requirements for the item.

(c) Purchase description, as well as other forms of specifications, must accurately reflect the needs of the Government.

(d) Purchase descriptions shall clearly and accurately describe the technical requirements or desired performance characteristics of the supplies or services to be procured; and, when appropriate, the testing procedures which will be used in determining whether such requirements or characteristics are met. When necessary, preservation, packaging, packing, and marking requirements shall be included. Purchase descriptions may contain references to formal Government specifications and standards which are to form a portion of the purchase description.

(e) Purchase descriptions may include or consist of references to specifications and standards issued, promulgated, or adopted by technical societies or associations, or State and local governments, if such specifications and standards (1) are widely recognized and used in commercial practice, (2) conform to the requirements of the using agency and (3) are readily available to suppliers of the supplies or services to be procured.

#### § 235-16. Brand name products or equal

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only as hereinafter provided. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all

known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government, contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor.

### DIVISION 3. SOLICITATION OF BIDS

#### § 235-21. Preparation of invitation for bids

Invitation for bids shall contain the applicable information required for a particular procurement.

(a) For supply and service contracts, and sale for unusable and obsolete personal property, including construction, invitation for bids shall contain the following information if applicable to the procurement involved:

(1) Invitation number.

(2) Name and address of issuing activity.

(3) Date of issuance.

(4) Date, hour, and place of opening. Prevailing local time shall be used.

(5) Number of pages.

(6) Where required requisition or other purchase authority, and appropriation and accounting data.

(7) A description of supplies or services to be furnished, or sale of unusable personal property, under each item in sufficient detail to permit full and free competition.

(8) The time of delivery or performance requirements and/or provision for prospective supplier to so state.

(9) Permission, if any, to submit telegraphic bids.

(10) Permission, if any, to submit alternative bids, including alternative material or design.

(11) A statement in the invitation that "Bids must set forth full, accurate, and complete information as required by this Invitation for Bids (including attachments). The penalty for making false statements in bids is prescribed in 14 V.I.C. § 843."

(12) Bid guarantee, performance and payment bond requirements, if any.

(13) Any authorized special provisions relating to the project.

(14) A requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other preaward processing.

(15) Any additional contract provisions or conditions required by law or regulation including applicable Federal Law and the rules and regulations issued thereunder.

(b) For supply and services contracts, excluding construction, invitations for bids shall contain the following, in addition to the information required by the foregoing if applicable to the procurement involved:

(1) Discount provisions.

(2) The quantity of supplies or services to be furnished under each item, and any provisions for quantity variation.

(3) Any requirement for prior testing and qualification of a product, when the item to be purchased is on a qualified products list.

(4) Place and method of delivery.

(5) Preservation, packaging, packing, and marking requirements, if any.

(6) Place, method, and conditions of inspection.

(7) If no award will be made for less than the full quantities advertised, a statement to that effect.

(8) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(9) If the invitation for bids gives the Government an option to increase or decrease quantities specified, a statement of the maximum percentage of such increase or decrease.

(10) Any applicable requirements for samples or descriptive literature.

## DIVISION 4. MISCELLANEOUS RULES FOR SOLICITATION OF BIDS

### § 235-31. Bidding time

Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time—i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids—to permit prospective bidders to prepare and submit bids. This will facilitate competition on reasonable and equal terms. Undue limitation of bidding time tends to restrict competition.

The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of preinvitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors, must be considered in establishing bidding time. As a general rule, therefore, bidding time shall be not less than fifteen (15) calendar days when procuring standard commercial articles and services obtainable and available within the Territory of the Virgin Islands and not less than thirty (30) calendar days when procuring standard commercial articles or services available from outside the Territory of the Virgin Islands. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay.

### § 235-32. Telegraphic bids

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer the date set for opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms, or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized the invitation for bids shall require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that the contract may be executed on the proper forms, the invitation for bids will also provide that the telegraphic bids should be confirmed on the prescribed form and submitted promptly to the contracting officer.

### § 235-33. Place and method of delivery

(a) Invitations for bids solicited f.o.b. destination shall state that the bids will be evaluated on the basis of bid price plus transportation cost to the Government from point of origin to designated destination.

(b) Invitations for bids solicited f.o.b. destination shall include as much of the following information as is pertinent to the particular procurement and shall require bidders to furnish the Government such of the following information as may be appropriate—

- (1) Method of shipment such as water or air and/or mail.
- (2) Guaranteed shipping weight; and
- (3) Packing, crating and other information.

**§ 235-34. Amendment of invitations for bids**

(a) If after issuance of invitations for bids but before the time set for opening of bids it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids. The amendment shall be sent to each concern to whom the invitation for bids has been furnished and shall be displayed in the bid room.

(b) Each amendment issued to an invitation for bid shall—

(1) Be serially numbered, using a separate series of numbers for each invitation for bids concerned.

(2) Include the number of the invitation for bids concerned.

(3) Clearly state the changes made in the invitation for bids and the extension of the opening day, if any. If no extension of the time set for opening is involved, the amendment shall so state.

(4) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

(c) Before issuing an amendment to an invitation to bid, the period of time remaining until the time set for opening and the need for extending this period by postponing the time set for opening must be considered. When only a short time remains before the time set for opening, consideration should be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in the amendment.

(d) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders.

No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

### § 235-35. Cancellation of invitations

(a) Invitations for bids should not be cancelled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the material or service or where amendments to the invitation would be of such magnitude that a new invitation is desirable. When an invitation is cancelled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

(b) The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being cancelled; and, when appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of material or services involved.

## DIVISION 5. SUBMISSION OF BIDS

### § 235-41. Responsiveness of bids

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids as provided in section 235-22 of this subchapter.

(c) Bids shall be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (i) the bidder accepts all the terms and conditions of the invitation, and (ii) award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation.

(d) Bids shall be submitted so as to be received in the Office of the Contracting Officer not later than the exact time set for opening of bids. Where telegraphic bids are authorized, a telegraphic bid received in such office by telephone from the receiving telegraphic office not later than the time set for opening of bids shall be considered if such bid is confirmed by the telegraph company by sending a copy of the telegram which form the basis for the telephone call.

§ 235-42. Late bids

(a) [Late bids.] Bids received at the Office of the Contracting Officer after the precise time set for opening of bids are late bids. Late bids shall not be considered for award except as authorized in subsection (b).

(b) [Consideration of late bids.] A late bid shall be considered for award only if it is received before award; and either

(1) It was sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined that the lateness was due solely to a delay in the mails or to a delay by the telegraph company, for which the bidder was not responsible; or

(2) If submitted by mail—or by telegram where authorized—it was received at the Office of the Contracting Officer in sufficient time to be opened as required in the invitation but except for delay due to mishandling on the part of the Government. The only evidence acceptable to establish timely receipt at the Office of the Contracting Officer is that which can be established upon examination of an appropriate time stamp.

(c) Hand-carried bids. A late hand-carried bid, or any other late bid not submitted by mail or telegram, shall not be considered for award.

(d) Registered mail. The time of mailing of a late bid mailed by registered mail may be determined by the date of the postmark on the registered mail receipt or registered mail wrapper. The time of mailing shall be deemed to be the last minute of the date shown in such postmark unless the bidder furnishes evidence from the post office station of mailing which established an earlier time. If the postmark does not show a date, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office of mailing which establishes timely mailing.

(e) Certified mail. The time of mailing of a late bid, mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be deemed to be the last minute of the date shown in the postmark on such receipt where (i) the Receipt for Certified Mail identifies the post office station of mailing and the bidder furnishes evidence from such station that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (ii) an entry in ink on the Receipt of Certified Mail, showing the time of mailing and the initials of the postal employee receiving the item and making the entry, is appropriately verified in writing by the post office station of mailing in which case the time of mailing shall be the time shown in the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late.

(f) **Delivery time.** Information concerning the normal time for mail delivery shall be obtained by the Department of Property and Procurement from the postmaster, superintendent of mails, or a duly authorized representative for that purpose of the post office. When time permits such information shall be obtained in writing.

(g) **Telegraphic bids.** A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late.

(h) **Notification to late bidders.** Where a late bid is received and it is clear from available information that under this section such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered.

(i) **Disposition of late bids.** A late bid which is not for consideration shall be held unopened until after award and then returned to the bidder (unless other disposition is requested or agreed to by the bidder). However, an unidentified late bid may be opened solely for purposes of identification.

(j) **Records.** The following shall, if available, be included in the contracting officer's file with respect to each late bid—

(1) A statement of the date and hour of mailing or filing.

(2) A statement of the date and hour of receipt.

(3) The determination of whether or not the late bid was considered for award, with supporting facts.

(4) A statement of the disposition of the late bid.

(5) The envelope, or other covering, if the late bid was considered for award.

#### § 235-43. Modification or withdrawal of bids

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the Office of the Contracting Officer not later than the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered if such message is confirmed by the telegraph company by sending a copy of the written telegram which formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official who shall write thereon the date and time of

receipt and by whom, the invitation for bid number, and his signature. No information contained therein shall be disclosed before the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening the bid.

#### § 235-44. Late modifications and late withdrawals

Modifications of bids and requests for withdrawal of bids which are received in the Department of Property and Procurement after the exact time set for opening are "late modifications" and "late withdrawals", respectively. A late modification or late withdrawal shall be subject to the rules and procedures applicable to late bids set forth in section 235-43 of this subchapter. However, a late modification of the otherwise successful bid shall be opened at any time it is received, and if in the judgment of the contracting officer it makes the terms of the bid more favorable to the Government, it shall be considered.

### DIVISION 6. OPENING OF BIDS AND AWARD OF CONTRACTS

#### § 235-51. Receipt and safeguarding of bids

(a) All bids (including modifications) received prior to the time set for opening shall be kept unopened, except as stated in subsection (b) of this section, and secure in a locked bid box or other locked receptacle. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Government employees who have a proper need for such information. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position title on the envelope and deliver it to the proper official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and his signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

#### § 235-52. Opening of bids

(a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived and shall so declare

to those present. All bids received prior to the time set for opening shall then be publicly opened and, when practicable, read aloud to the persons present, and be recorded. If it is impracticable to read the entire bid, as where many items are involved, the total amount bid shall be read, if feasible. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and it is accurately verified.

(b) Performance of the procedure herein may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of such assistant.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. However, original bids shall not be allowed to pass out of the hands of a Government official unless duplicate copies of such bids are not available for public inspection. In such cases, the original bids may be examined by the public only under the immediate supervision of a Government official and under conditions which preclude the possibility of substitution, addition, deletion, or alteration in the bids.

#### § 235-53. Recording of bids

The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered in an abstract or record which, shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The record or abstract shall be completed as soon as practicable after the bids have been opened and read. The bid opening officer shall certify the accuracy of the record or abstract. If the invitation for bids is cancelled before the time set for bid opening, this fact shall be recorded, together with a statement of the number of concerns invited to bid and the number of bids received.

## DIVISION 7. REJECTION OF BIDS

### § 235-61. Cancellation of invitation after opening

(a) Invitations for bids may be cancelled after opening but prior to award, and all bids rejected, where such action is consistent with the following, and the Contracting Officer determines in writing that cancellation is in the best interest of the Government for reasons such as—

(1) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.

(2) The supplies or services are no longer required.

(3) The invitation for bids did not provide for consideration of all factors of cost to the Government, such as cost of transportation.

(4) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited.

(5) All otherwise acceptable bids received are at unreasonable prices and exceed the funds available or to become available.

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(7) The bids received did not provide competition which was adequate to insure reasonable prices.

(b) Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, in writing before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

### § 235-62. Rejection of individual bids

(a) Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, or permissible alternates thereto, shall be rejected as nonresponsive.

(b) Ordinarily, a bid shall be rejected where the bidder imposes conditions which would modify requirements of the invitation for bids or limit his liability to the Government so as to give him an advantage over other bidders. For example, bids shall be rejected in which the bidder—

(1) Attempts to protect himself against future changes in conditions, such as increased costs, if total price to the Government cannot be determined for bid evaluation.

(2) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery".

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery".

(4) Where not authorized by the invitation, conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement.

(5) Limits rights of Government under any contract clause. However, a low bidder may be requested to delete objectionable conditions from his bid if these conditions do not go to the substance, as distinguished from the form of the bid. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(c) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(d) Bids received from any person or concern debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

(e) Where a bid guarantee is required and a bidder fails to [furnish] it in accordance with the requirements of the invitation for [bids], the bid shall be rejected as otherwise herein provided.

(f) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the procurement.

#### § 235-63. Notice to bidders of rejection

When it is determined to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

#### § 235-64. All or none qualifications

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

#### § 235-65. Minor informalities or irregularities in bids

A minor informality or irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the sup-

plies or services being procured. The contracting officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waiver such deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include—

(a) Failure of bidder to return the number of copies of signed bids required by the invitation for bids.

(b) Failure to furnish required information concerning the number of bidders' employees.

(c) Failure of bidder to sign its bid, but only if (1) the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as a bid guarantee, or a letter signed by the bidder referring to and clearly identifying the bid itself; or (2) the firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature, and submits evidence of such authorization and the bid carried such a signature.

(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if:

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon; or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the item bid upon.

## DIVISION 8. MISTAKES IN BIDS

### § 235-71. Examination for mistakes—Generally

After the opening of bids the contracting officer shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with the provisions hereof. Such actions shall be taken prior to award.

(a) **Apparent clerical mistakes:** Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are: obvious misplacement of a decimal point; obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and obvious mistake in designation of unit. Correction shall be reflected in the award document.

**(b) Other mistakes disclosed before award:**

(a) In order to minimize delay in contract awards administrative determinations described below may be made in connection with mistakes in bids alleged after opening of bids and before award. The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive.

The following shall govern:

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake. However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid, both as uncorrected and corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

(2) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(3) If the evidence does not warrant a determination under the provisions hereof a determination may be made that a bidder may neither withdraw nor correct his bid.

**(c) Disclosure of mistakes after award:**

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract amendment or supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract.

(b) Mistakes disclosed after award shall be processed as follows—

(1) Whenever a mistake in bid is alleged or disclosed after award, the Contracting Officer shall advise the contractor to support the alleged error by written statements and by all pertinent evidence, such as the contractor's file copy of the bid, his original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) The contracting officer shall issue an opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based, the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will be procured.

#### § 235-72. Awards

(a) **Generally:** Unless all bids are rejected, award shall be made by the contracting officer by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. Award shall not be made until all required approvals have been obtained. Awards shall be made by mailing or otherwise furnished to the successful bidder a properly executed award document or notice of award. When an advance notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

(b) **Responsible bidder:** Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible as provided in section 22 hereof.

#### (c) **Discounts:**

(a) Prior to issuing an invitation for bids (except one for construction), a determination shall be made as to what minimum period for prompt payment discounts will be considered in the evaluation of bids and such minimum period shall be stated in the invitation for bids. In determining the minimum period for a particular procurement, consideration shall be given to—

(1) The place of delivery, inspection, and acceptance in relation to the place of payment of invoices or vouchers.

(2) The number of days required to process invoices or vouchers from receipt through payment in the normal course of business.

(3) The need for prolonged acceptance testing or other unusual circumstances tending to retard the normal processing of invoices or vouchers.

(b) In determining which of several bids received in the lowest, any discount offered shall be deducted from the bid price on the assumption that the discount will be taken, unless the discount offered is for a lesser period than the minimum number of days specified in the invitation for bids. In evaluating equal bids offering discounts meeting the minimum discount period required by the invitation, a bid offering a longer discount period shall not be considered as being more advantageous to the Government. If a bid offers a prompt payment discount, but fails to specify the period in which the discount may be taken, the discount may be considered since award to the bidder gives the Government the right to deduct the discount from any payment made with reasonable promptness.

(c) If a bid offers a prompt payment discount for a period less than that specified in the invitation for bids, the discount shall not be considered in the evaluation of bids. If a bid would have been the lowest bid received if the discount offered were considered, but award is not made thereon because the offered discount cannot be considered, a notation to that effect shall be made upon the abstract or record of bids and on the Statement and Certificate of Award.

(d) In any case, the offered discount of the successful bidder shall form a part of the award, whether or not such discount was considered in the evaluation of its bid, and such discount shall be taken if payment is made within the discount period.

#### § 235-73. Other factors to be considered

The factors set forth in this section, among others, may be for consideration in evaluating bids for award.

(a) Foreseeable costs or delays to the Government resulting from differences in inspection, location or supplies, transportation and so forth.

(b) Changes made or requested by the bidder in any of the provisions of the invitation for bids to the extent that any such change does not constitute ground for rejection of the bid under the provisions of section 29.

(c) Advantages or disadvantages to the Government that might result from making more than one award.

(d) Origin of supplies, whether domestic or foreign, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases.

**§ 235-74. Equal low bids**

If two or more bidders are equally eligible for award, award shall be made by a drawing by lot limited to such bidders. If time permits, the bidders involved shall be given an opportunity to be present at the drawing by lot. Such drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of those witnesses.

**§ 235-75. Preference**

In each award where preference is to be given, in accordance with applicable law, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the preference.

**DIVISION 9. PROTESTS AGAINST AWARD**

**§ 235-81. Protests or objections to contract award**

(a) **Generally:** The Contracting Officer shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest.

(b) **Protests before award:** If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(c) Where a written protest against the issuance of an award is received, award shall not be made until the matter is resolved, unless the contracting officer determines that—

(i) The items to be procured are urgently required; or (ii) delivery or performance will be unduly delayed by failure to make

award promptly; or (iii) a prompt award will otherwise be advantageous to the Government.

If award is made under (i), (ii) or (iii) above, the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

(d) **Protests after award:** A protest received after award shall be handled in a manner to be determined by the circumstances.

#### § 235-82. Information to bidders

(a) Where award is made to other than the low bidder, the contracting officer shall notify the unsuccessful low bidders promptly of the fact that their bids were rejected. Where the contracting officer has reason to believe that an unsuccessful lower bidder may protest the rejection of his bid, the notification to the bidder also should state in general terms the reason for rejection.

(b) Notification of rejection also shall be given to any unsuccessful higher bidder where the circumstances were such that he may have had reason to believe he might receive an award, e.g., the bidder was requested to extend his bid acceptance time to clarify his bid, or the bidder knew that his bid was the lowest received by bid opening time (but the lower successful bid was received late).

(c) If additional information is requested by unsuccessful bidders, the contracting officer shall furnish them with the name and address of the successful bidder, together with the contract price. In addition, if the request is made by an unsuccessful bidder whose bid price was lower than that of the successful bidder, sufficient information shall be furnished in the reply to fully explain the basis for the award.

(d) If a request is received from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer may, in his sole discretion, and if the facts and conditions appear to so dictate, furnish the names of the successful bidders and, if requested, the prices at which awards were made.

### DIVISION 10. USE OF NEGOTIATION

#### § 235-91. General requirements

(a) No procurement in excess of One Thousand (\$1,000.00) Dollars shall be made by negotiation if the use of formal advertising is feasible and practicable under the existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of 31 V.I.C. § 239(a) et seq.

(b) No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied—

(1) The contemplated procurement comes within one of the circumstances permitting negotiation enumerated in 31 V.I.C. § 239(a) et seq.

(2) All necessary determinations and findings have been made.

(c) Whenever property or services are to be procured by negotiation, proposals shall be solicited from the maximum number of qualified sources, including small business concerns, consistent with the nature of and requirements for the supplies or services to be procured, in accordance with the basic policies set forth herein to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Proposals shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and by such information concerning other vital matters as is deemed necessary by the contracting officer.

(d) Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the contracting activity is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action shall include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive procurements.

#### § 235-92. Factors to be considered in negotiating

During the course of negotiations, due attention shall be given to the following and any other appropriate factors:

(a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to production costs, including extra pay shift, multi-shift and overtime costs, and any other factor relating to the price, such as profits, cost of transportation and cash discounts.

(b) Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.

(c) Consideration of the quality of the property or services offered, including the same or similar property or services previously furnished, with due regard to conformance with specification requirements.

(d) Consideration of delivery requirements.

*Subchapter 236. Contract Procedure*

§ 236-1. Negotiation of contracts

The Governor's Executive Order No. 33 - 1958, issued July 21, 1958, and filed with Government Secretary July 21, 1958 (File No. 90).

*Subchapter 238. Replacement Standards*

§ 238-1. Minimum requirement standards

The following minimum requirement standards are hereby prescribed to be used by all executive departments and agencies desiring to replace specified types of items indicated herein. Departments and agencies shall retain items which are in usable and workable conditions despite these replacement standards, provided the item can continue to be used or operated without excessive maintenance cost or substantial reduction in trade-in value.

§ 238-2. Motor vehicles

(a) If a motor vehicle has been wrecked or damaged (including wear caused by abnormal operating conditions) beyond economical repair—after certification and proof thereof by the Commissioner or the Head of the Department or Agency—such unit may be replaced without regard to the standards herein set forth.

(b) Passenger cars and station wagons may be replaced when they have been operated for three (3) years or 60,000 miles, whichever occurs first.

(c) Ambulances may be replaced when they have been operated for five (5) years or 60,000 miles, whichever occurs first.

(d) Buses for 11 or more passengers may be replaced when they have been operated for eight (8) years. Without regard to years of use, such buses may be replaced when they have been in operation for the following number of miles:

City-type Bus .....	150,000 miles
School-type Bus .....	80,000 miles

(d) Multiple-drive (4- or 6-wheel drive) trucks chassis combination personnel and property carrying motor vehicles may be replaced when they have been operated for six years or 40,000 miles, whichever occurs first.

(e) Motor trucks provided with pickup or express, panel or sedan-delivery, carryall, van, open van, platform, stake, rack, dump, truck-tractor, or tank bodies may be replaced in accordance with the following table of years or mileage operation, whichever occurs first:

<i>Maximum GFM Pounds</i>	<i>Total Years</i>	<i>Total Miles</i>	<i>Pay Load Rating</i>
Less than 12,500	6	50,000	1 ton and less
12,500-16,999	7	60,000	1½ through 2½
17,000	9	80,000	3 tons and over

(f) Where a Department or Agency owns eight or more vehicles in any one of the following classes—

- (1) Automobiles (sedans, etc.);
- (2) All other passenger-carrying vehicles (station wagons, ambulances, buses); and

(3) All trucks and truck tractors not more than twenty-five percent (25%) of the vehicles in such class may be replaced in any one fiscal year. Where the total number of vehicles in any one class is less than eight, nor more than two of such vehicles may be replaced in any fiscal year. However, all vehicles to be replaced shall meet the age or mileage replacement standards contained herein.

### § 238-3. Office machines

Replacement of office machines shall be in accordance with the standards prescribed herein. The acquisition cost of comparable machines shall be obtained from applicable Federal Supply Schedules with due consideration given to prices obtainable when the quantities involved exceed the maximum order limitation.

Estimated repair or overhaul costs shall be obtained from contractors providing service under GSA term contracts where provided or at the lowest rate available from other sources. Cost shall include transportation costs.

(a) Electrically operated office machines—typewriters, adding machines, comptometers, and desk calculators, excluding the electronic type—under twelve (12) years of age, or manually operated office machines under fifteen (15) years of age, shall not be replaced unless—

(1) The estimated one-time repair or overhaul cost of a machine under eight (8) years of age exceeds 50 percent of the replacement cost for a comparable new model, without regard to trade-in or sale value; or

(2) The estimated one-time repair or overhaul cost of a machine eight (8) years of age and over exceeds 25 percent of the replacement cost for a comparable new model, without regard to trade-in or sale value.

(b) Notwithstanding the limitations prescribed in subsection (a) of this section, office machines may be replaced under the following conditions provided a written justification supporting such replacement is approved by the Governor or his designee and the same made a pertinent portion of the case file for replacement:

(1) In those cases where there is a continuing history of breakdowns with corresponding loss of productivity through downtime. Judgments in these cases should be based upon personal knowledge of the machine operator or supervisor, and by repair records; or,

(2) When office machines lack essential features required in the performance of a particular task which is continuing in nature and other suitable machines are not readily available.

#### § 238-4. Furniture

Furniture—office, household and institutional—shall not be replaced unless the estimated cost of repair or rehabilitation (based on GSA term contracts) including any transportation expense, exceeds at least seventy-five (75%) percent of the cost of a new item of the same type and class (based on prices as shown in the current edition of the GSA Stock Catalog, applicable Federal Supply Schedules, or the lowest available market price).

An exception is authorized in those unusual situations when rehabilitation of the furniture at 75 percent of the cost of a new item would not extend its useful life for a period compatible with the cost of rehabilitation, as determined by the Commissioner of Property and Procurement.

#### § 238-5. Acquisition through volume purchase

(a) General: Agency requirement shall be consolidated by the Department of Property and Procurement. Wherever practicable procurement shall be through the General Services Administration and shall insofar as is possible comport with the yearly volume procurement of that agency.

(b) Motor vehicles: Purchase of Motor Vehicles shall be made twice a year on a volume basis. The first volume procurement shall be as early as practicable after July 1 but not later than October 15 of each calendar year. The second volume procurement will be as early as practicable after February 1 but not later than March 31 of each calendar year.

(c) Office machines and furniture: Each department or agency shall make a determination as to whether the requirements of the department or agency can be met through the utilization of already owned items prior to the acquisition of new furnitures or typewriters. The acquisition of new items shall be limited to those requirements which are considered absolutely essential and shall not include upgrading to improve appearance, office decor, status, or to satisfy the desire for the latest design or more expensive lines.

(1) Generally, acquisition of additional furnitures or typewriters from any source will be authorized only under the following circumstances, limited to the least expensive lines which will meet the requirement hereof with respect to items such as typewriters under Federal Supply Schedule Contracts.

(i) For essential requirements arising from quantitative increases in onboard employment which constitute the total requirement of any department or agency or major component thereof (e.g. bureau, division, service or office).

(ii) For essential requirements arising from a need not related to onboard employment increases but which are determined necessary to avoid impairment of program efficiency.

(2) Restrict replacement of furniture or typewriter either to usable excess, rehabilitated, or the least expensive lines of new furniture determined to meet the requirement under the following circumstances, authority for which shall be fully documented:

(i) Where the department or agency determines that the item is not economically repairable.

(ii) Where reductions in office space occupancy are accomplished through use of more convenient or smaller size furniture and the space economies thus achieved offset the cost of the furniture to be acquired.

### *Subchapter 239. Open Market Orders*

#### **§ 239-1. General scope of regulations**

This subchapter prescribes policies and procedures which shall be observed by executive departments and agencies in connection with procurement by negotiation (open market purchases) as authorized by 31 V.I.C. § 239(a). Included herein are the basic requirements for the procurement of materials, supplies and equipment and contractual services to be negotiated for, including the different circumstances under which negotiation is permitted; determinations and findings that may be required before a contract is entered into by negotiation; types of negotiated contracts and their use and price negotiation policies and techniques.

#### **§ 239-2. Authority to negotiate**

The authority to negotiate contracts will be exercised exclusively by the Department of Property and Procurement except as may be otherwise provided by law and/or Rules and Regulations. Purchasing Officials will exert every reasonable effort to obtain the most favorable prices possible. The proper exercise of the negotiating authority would ordinarily require actual negotiations with interested suppliers beyond the solicitation of proposals.

It should, therefore, be noted that this bargaining should be free from sharp practices or other actions which may cause inequities for bidders or justified criticism of the purchasing policies and procedures of the Government of the Virgin Islands.

#### § 239-3. General requirements for negotiations

No purchase or contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(a) The contemplated purchase or contract comes within one of the circumstances permitting negotiation; (b) all necessary determinations and findings have been made and (c) the prospective contractor has been determined to be responsible.

#### § 239-4. Factors to be considered in negotiated contracts

Whenever a purchase is to be made or a contract entered into by negotiation, offers shall be solicited from all such qualified sources as are deemed necessary by the Commissioner of Property and Procurement to assure full and free competition, consistent with the purchase or contract and to the end that the purchase or contract will be made to the best advantage of the Government, price and other factors considered. Such offers, wherever possible, shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the Commissioner of Property and Procurement. Negotiation shall thereupon be conducted with due attention being given to the following and any other appropriate factors—

(a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to other factors relating to the price, such as profits, cost of transportation and cash discounts.

(b) Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.

(c) Consideration of the quality of the purchase or contract including the same or similar previously furnished, with due regard to conformance with specification requirements.

(d) Consideration of the existing and potential workload of the prospective supplier.

(e) Consideration of past performance and ability to deliver when required.

#### § 239-5. Circumstances permitting negotiation

(a) **Emergency.** Pursuant to 31 V.I.C. § 239(a) (1) supplies, materials and equipment may be purchased, and contractual services negotiated for, when "The Governor declares, in the public interest, by Proclamation, that a State of Emergency exists and specifies in such Proclamation those purchases and/or services which may be obtained without observing provisions of said section 236;"

(b) **Duration.** Under existing circumstances, authority of this section shall extend for the duration of the Emergency declared by the Governor.

(c) **Application.** The authority of this section shall be used only to the extent of furthering the objective enunciated in the Emergency Proclamation. Purchases and Contracts issued hereunder will be in accordance with the policies herein outlined. Further each purchase and/or contract hereunder shall cite the Governor's Proclamation by number and date.

#### § 239-6. Public exigency

Pursuant to the authority of 31 V.I.C. § 239(a)(2) supplies, materials and equipment may be purchased, and contractual services negotiated for, when "The public exigency demands such immediate action due to sudden, unexpected, and unforeseen occurrence, happening or condition; And, provided further, That all requisitions pursuant to this subdivision shall be clearly stamped 'Public Exigency'";

(a) **Application.** In order for this authority to be used, the need must be urgent as a result of a sudden, unexpected and unforeseen occurrence, happening or condition which was not allowed to develop by negligence or oversight. For example, this authority may be used when it has been established that the Department or the Government would be seriously injured, financially or otherwise if the purchase or contract were not effected in order to have the services or materials, supplies or equipment on a day certain and when they could not possibly be procured by that time by means of formal advertising.

This authority shall be used when property or services are immediately needed because of a fire, flood, explosion or other disaster.

This authority may be used also when:

(1) Parts or services are immediately required to effect urgent repairs to machinery or equipment in order to minimize delay in service and downtime of such machinery or equipment.

(2) Developments in connection with any essential government activity requiring the immediate purchase of supplies or services to permit program accomplishment within the time required when such time will not permit use of formal advertising procedures and it can be clearly shown that such development was without the fault or negligence of the department or agency.

(3) Materials and services required to meet an exigency created by the default of a contractor to whom a contract for like items had previously been awarded.

(b) [Approval by Governor.] Purchases made or contract issued pursuant to 31 V.I.C. § 239(a) (1) and (2) and in accordance with this subchapter shall not be effected, although approved by the Commissioner of Property and Procurement, until and unless approved by the Governor as is required by 31 V.I.C. § 239(b).

(c) [Public exigency.] Further, purchases made or contracts issued exclusively under the provisions of 31 V.I.C. § 239(a) (2) and the provisions hereof shall be clearly stamped "Public Exigency".

(d) **Limitations.** Every purchase or contract negotiated under this authority shall be accompanied by a signed statement of the Commissioner or Department Head or Agency explaining its use.

When purchase action under this authority is based on telephonic or other oral offers, a written confirmation of the accepted offer shall be secured and made a part of the purchase case file. A record shall be established also in such cases containing the following information as a minimum: name and address of each offeror quoting, item description, unit price, delivery time, and discount terms.

If quotations lower than the accepted quotation are received, the reason for their rejection shall be recorded and made a part of the purchase file.

#### § 239-7. Purchases not in excess of one thousand dollars

Pursuant to 31 V.I.C. § 239(a) (3) supplies, materials and equipment may be purchased, and contractual services negotiated for, when "the aggregate amount involved is not more than \$1,000;"

(a) **Application.** Purchases or contracts aggregating one thousand (\$1,000) dollars, or less, shall be made under this authority rather than under any of the other authorities herein mentioned for negotiation. In arriving at the "aggregate amount involved" there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than \$1,000 shall not be broken down into several purchases or contracts of less than one thousand (\$1,000) dollars.

(b) [Waiver of explanation.] The Commissioner of Property and Procurement may waive the filing of an explanation hereunder if the aggregate amount of such purchase or contract is less than one thousand (\$1,000) dollars. In such case the Commissioner shall stamp on the requisition "Explanation Waived".

#### § 239-8. Professional services

Pursuant to 31 V.I.C. § 239(a) (4) purchases and contracts may be negotiated without formal advertising if "the purchase is for professional services; Provided, That such services shall be procured by competitive negotiation, wherever practicable;"

(a) **Application.** This authority shall include personal as well as professional services and the same shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person—not by a concern. If professional services, they may be performed either by an individual contractor in person or a concern;

(2) The services are of a professional nature, or are to be performed under Government supervision and paid for on a time basis;

Architect-Engineering Services may be negotiated hereunder after the same has been publicly announced. Professional services include (but are not limited to) those of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. Selection criteria will include the following factors:

(i) Professional qualification, registration, and general reputation of the principals of the firm;

(ii) The extent to which the firm specializes in or has designed projects of a type and scope similar to the one at hand;

(iii) Familiarity with the area in which the project is located;

(iv) Capability of meeting design schedules; and

(v) Quality of performance on other projects.

The Commissioner shall appoint a Selection Committee to assist in the evaluation and selection. After reviewing the qualifications and proposals the Committee shall select from the firms considered not less than three firms, in order of preference, deemed to be the most highly qualified to provide the services required. The Committee shall conduct discussions severally with the firms selected regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

The Committee shall recommend to the Commissioner the selection of the firm it considers meeting the criteria herein mentioned and most likely capable of performing in the best interest of the Government.

#### § 239-9. Purchases outside the Virgin Islands

Pursuant to 31 V.I.C. § 239(a) (5) supplies, materials and equipment may be purchased, and contractual services negotiated for, when "the purchase or contract is for property or services to be procured and used outside the Virgin Islands; Provided, That such property or services shall be procured by competitive negotiation;"

This authority shall be used only for the procurement of property or services which are actually purchased from sources located outside the Virgin Islands and used outside the Territory of the Virgin Islands. Accordingly, departments and agencies established outside the Territory of the Virgin Islands may employ the provisions hereof without prior approval from the Department of Property and Procurement.

#### § 239-10. Medicine or medical supplies

Pursuant to 31 V.I.C. § 239(a) (6) purchases and contracts may be negotiated without formal advertising if "the purchase or contract is for (a) medicine or medical, hospital, laboratory, surgical equipment and supplies; or (b) supplies, and equipment for the control and/or eradication of insects, pests, mosquitoes or grass diseases; or (c) supplies and equipment for the control and prevention of air and water pollution."

(a) **Application.** This authority shall be used only for such supplies, equipment and materials as are peculiar to the field of medicine, public health, sanitation and air and water pollution, including but not limited to technical equipment, such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment.

(b) **Limitations.** When exercising this authority regardless of the probable cost, competitive proposals shall be solicited from all such qualified sources of supply as the Commissioner of Property and Procurement may deem necessary to assure full and free competition consistent with the type and character of the procurement.

#### § 239-11. Property for authorized sale

Pursuant to 31 V.I.C. § 239(a) (7) purchases and contracts may be negotiated without formal advertising if "the purchase or contract is for property or material for authorized sale for agricultural purposes;"

This authority shall be used only for purchases for resale as may be statutorily authorized through Central Warehouses and other outlets. When exercising this authority, regardless of the probable cost, competitive proposals shall be solicited from all such qualified sources of supply as the Commissioner of Property and Procurement may deem necessary to assure full and free competition consistent with the type and character of the procurement.

§ 239-12. Impracticable to obtain competition by formal advertising

Pursuant to 31 V.I.C. § 239(a) (8) purchases and contracts may be negotiated without formal advertising if "the purchase or contract is for property or services for which it is impracticable to obtain competition;"

(a) Application. The following are illustrative of circumstances with respect to which this authority may be used when, for example—

(1) The property or services can be obtained from only one person or firm (sole source of supply).

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances. However, the mere existence of such rights or circumstances does not in and of itself justify the use of this authority.

(3) Bids have been invited pursuant to law and no responsive bid has been received from a responsible bidder.

(4) Bids have been invited pursuant to law and the responsive bid or bids do not cover the quantitative requirements of the invitation for bids, in which case, negotiation is permitted for the remaining requirements.

(5) The contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services.

(6) The contemplated procurement is for training film, motion picture productions, or manuscripts, textbooks including Legal Reports, Treatises, References and Books as well as other legal and other library materials and supplies.

(7) The contemplated procurement is for technical nonpersonal services in connection with the assembly, installation, or servicing—or the instruction of personnel therein—of equipment of a highly technical or specialized nature. This may also include maintenance, repair, alteration or inspection when the exact nature or amount of the work to be done is not known or is difficult to ascertain with accuracy.

(8) The contemplated procurement is for stevedoring, terminal, warehousing, transportation or delivery service when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal invitation for bids.

(9) The contemplated procurement is for services related to the procurement of perishable subsistence, such as protective, storage, packaging, handling, and transportation, and it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence.

(10) It is impossible to draft for an Invitation for Bids adequate specifications or any other adequately detailed description of the required property or services.

(11) The contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

(12) The contemplated procurement involves construction and/or alterations or renovations where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site or when the amount is too small to interest other contractors to mobilize or demobilize.

### § 239-13. Standardization of equipment and interchangeability of parts

Pursuant to 31 V.I.C. § 239(a)(9) purchases or contracts may be negotiated without formal advertising if "the purchase or contract is for equipment that is technical whose standardization and interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability."

(a) **Application.** This authority may be used for procuring additional units and replacement items of specified makes and models of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where such standardization and interchangeability is determined necessary in the public interest. Examples of situations where this authority may be used are where—

(1) In special situations it has been found necessary to limit the variety and quantity of parts that must be carried in stock; or where standardization is necessary so that parts may be available and interchanged among items of damaged or worn equipment.

(2) Technical equipment is available from a limited number of suppliers which would have such varying performance characteristics—notwithstanding detailed specifications and rigid inspection—as would prevent standardization and interchangeability of parts.

(b) Consideration shall be given to the following and other pertinent factors before making a determination to procure specified makes and models under this authority:

(1) The practicability of interchanging parts and cannibalizing equipment.

(2) The probability that future procurement of the selected item of equipment can be effected at reasonable prices.

(3) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock.

(4) The value of similar equipment and its supporting parts on hand.

(5) Possible savings in training personnel.

(6) Whether the standardization will adversely affect existing specifications and standards.

(7) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model already in the supply system.

(c) **Justification.** In arriving at a determination that standardization of equipment and interchangeability of its parts are necessary in the public interest, such standardization must be in fact fully justified as genuinely "necessary in the public interest." It is not sufficient that it merely be generally desirable. Nor is an arbitrary or perfunctory conclusion sufficient. Facts must clearly show the compelling reasons why it is necessary, as for example—

(1) Substantial savings possible through standardization. (Show estimated annual savings.)

(2) Minimizing potential breakdown of a specifically identified service or function which might endanger life, property or the orderly conduct of vital Government functions.

#### § 239-14. Negotiation after advertising

Pursuant to 31 V.I.C. § 239(a)(10) purchase or contracts may be negotiated without formal advertising if "the purchase or contract is for property or services for which the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which

"(A) each responsible bidder has been notified of an intention to negotiate and a reasonable opportunity has been given to negotiate;

"(B) the negotiated price is lower than the lowest rejected bid of any responsible bidder; and

"(C) the negotiated price is the lowest negotiated price offered by any responsible supplier;"

#### § 239-15. Negotiation otherwise authorized by law

Pursuant to 31 V.I.C. § 239(a)(11) purchases or contracts may be negotiated if "Negotiation of the price or a contract is otherwise authorized by law."

In using this authority the law so authorizing negotiation should be cited in the purchase or contract instrument.

(2) The probability that future procurement of the selected item of equipment can be effected at reasonable prices.

(3) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock.

(4) The value of similar equipment and its supporting parts on hand.

(5) Possible savings in training personnel.

(6) Whether the standardization will adversely affect existing specifications and standards.

(7) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model already in the supply system.

(c) **Justification.** In arriving at a determination that standardization of equipment and interchangeability of its parts are necessary in the public interest, such standardization must be in fact fully justified as genuinely "necessary in the public interest." It is not sufficient that it merely be generally desirable. Nor is an arbitrary or perfunctory conclusion sufficient. Facts must clearly show the compelling reasons why it is necessary, as for example—

(1) Substantial savings possible through standardization. (Show estimated annual savings.)

(2) Minimizing potential breakdown of a specifically identified service or function which might endanger life, property or the orderly conduct of vital Government functions.

#### § 239-14. Negotiation after advertising

Pursuant to 31 V.I.C. § 239(a)(10) purchase or contracts may be negotiated without formal advertising if "the purchase or contract is for property or services for which the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which

"(A) each responsible bidder has been notified of an intention to negotiate and a reasonable opportunity has been given to negotiate;

"(B) the negotiated price is lower than the lowest rejected bid of any responsible bidder; and

"(C) the negotiated price is the lowest negotiated price offered by any responsible supplier;"

#### § 239-15. Negotiation otherwise authorized by law

Pursuant to 31 V.I.C. § 239(a)(11) purchases or contracts may be negotiated if "Negotiation of the price or a contract is otherwise authorized by law."

In using this authority the law so authorizing negotiation should be cited in the purchase or contract instrument.

Other statutory authority of a department or agency to procure "without advertising" or "without regard to 31 V.I.C. § 236" is construed to authorize negotiation hereunder.

#### § 239-16. Government of the United States

Pursuant to the authority of 31 V.I.C. § 239(a)(12) purchases or contracts may be negotiated without formal advertising if "the purchase is from the United States General Services Administration, the United States Superintendent of Documents, Government Printing Office, or is made under the terms of a contract of the General Services Administration, Federal Supply Service, and in the case of such purchases only, subsection (b) of this section shall not apply."

This authority may be used to purchase from the sources herein mentioned as well as from other Government sources including but not limited to Federal Prison Industries, Inc., and National Industries for the Blind and any other agency or instrumentality of the United States Government or any State Government and the Commonwealth of Puerto Rico.

#### § 239-17. Direct purchases

Departments and Agencies of the Government are hereby permitted to make direct cash purchases or contracts for supplies, materials, equipment and contractual services, without prior approval by the Commissioner of Property and Procurement provided the aggregate amount of one purchase or contract does not exceed five hundred dollars (\$500).

(a) **Application.** This authority may be used only within the Territory of the Virgin Islands for making small purchases of supplies and nonpersonal services through the use of an Imprest Fund.

(b) **Definition of Imprest Fund.** The term "Imprest Fund" means a fixed cash or petty cash revolving-type fund in the form of currency, coin, or check which has been advanced by the Commissioner of Finance under applicable law and rules and regulations issued thereunder.

(c) **Agency responsibility.** Each department or agency using Imprest Funds for small cash purchases of supplies or nonpersonal services shall have the responsibility of periodically reviewing and determining whether there is continuing need for such fund, and that the amounts of such funds are not in excess of actual needs. Departments and Agencies should take prompt action to have Imprest Funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action. In this connection departments and agencies shall study their practices to insure that full advantage is taken of all small purchase processes.

(d) **Use of Imprest Funds.** The cash payment processes described in this section should be used for making small purchases whenever advantageous to the Government. Cash purchases will generally be advantageous in the following circumstances:

(1) When vendors are reluctant to honor small purchase orders.

(2) When vendors are not equipped to bill for purchases in accordance with normal business practices and/or monthly billings by vendors are impracticable.

(3) The following are typical examples of procurement for which the use of an Imprest Fund would be suitable—

(i) Public exigency, fill-in, occasional, or special purchases of supplies or services;

(ii) Repair to equipment and office machines;

(iii) Postage stamps, parcel post, C.O.D., postal charges, Post Office Box rent and transportation charges.

(e) **Restrictions.** Purchases or contract for services hereunder shall not be so made or conducted merely for the specific purpose and intent to evade or circumvent other applicable provisions of law. Under normal circumstances not more than one five-hundred-dollar (\$500) transaction shall be made to any one supplier or contractor in any calendar week.

#### § 239-18. Blanket purchase agreement (BPA)

(a) **General.** A blanket purchase agreement is a simplified method of filling anticipated repetitive needs of supplies or services. It is designed to reduce administrative costs in accomplishing purchases by eliminating the need for issuing individual purchase documents.

(1) The Blanket Purchase Arrangement is an incomplete contract with a given vendor or vendors to purchase certain items from such vendor. It may or may not particularize all the terms, conditions and delivery instructions and other information.

(b) **Policy.** The Blanket Purchase Arrangement is hereby established and the same is authorized to be used with respect to the purchase of day-to-day requirements whether from one source or a number thereof. Arrangements will first be made through the Department of Property and Procurement with the vendor or vendors to furnish on a "charge account" basis such supplies or non-personal services as a department or agency may order from such source or sources.

No such arrangement will extend beyond an allotment period. And, generally, arrangements will only be made with local suppliers.

(c) **Limitation on use.** A blanket purchase agreement will not be used when the value thereof exceeds one thousand dollars (\$1,000) except for purchases against term contracts.

(d) Use of BPA. Blanket purchase arrangements may be used when—

(1) there is only one known and established supplier or manufacturer of the item or items, such as but not limited to concrete, asphalt and milk; and, when the exact quantities and delivery requirements are not known in advance and may vary considerably.

(2) in any other case where the writing of numerous purchase orders can be avoided through the use of this procedure particularly in the case of subsistence on term contracts; and where a wide variety of items in a class of goods, such as perishables may be purchased because of the frequent price discounts which are offered.

(3) where past experience has shown that certain commercial firms are dependable and consistently offer lower prices than other supply firms dealing in the same commodities, and numerous small purchases are usually made from such supplier, and it appears conclusively that it would be advantageous to establish blanket purchase arrangements with these firms.

(e) Documentation.

(1) If it is determined that blanket purchase arrangements with certain suppliers would be advantageous, the Department of Property and Procurement should be requested, in ample time, to make such contracts in order to secure maximum discounts and finalize other necessary details.

(2) A formal request for establishment of a blanket purchase arrangement will be made in the form of a requisition. The requisition may be general and broad in language with only sufficient detail to indicate the general nature of the supplies or services to be covered; or may as the need dictates be specific as to quantity, quality, specifications and delivery.

The blanket purchase order will be issued only on authorized purchase order forms. An amount certain will appear on the order and after the same has been entered on the books of the Department of Finance, will authorize delivery and expenditure for a specific period generally not to exceed the allotment period of appropriations. Only when the named vendor receives a bona fide request, written or oral, from the respective department will the act of purchasing become effective and binding.

(3) Individual BPA's will end as soon as the purchases thereunder total the dollar amount limitation and/or when the stated period expires, provided the same is not sooner terminated or extended.

(4) The use of BPA's will not exempt the departments and agencies from the responsibility of keeping obligations and expenditures within available funds. This should be accomplished in

accordance with accounting prescriptions issued by the Department of Finance and/or by such simplified methods which the departments and agencies may adopt to insure proper fiscal recordation.

(5) In any contemplated amendment to a BPA, due consideration should be given to possible changes in market conditions sources of supply, and so forth, which may warrant placing a new order with the same or a different source in preference to the amendment.

Constant consideration should be given to possible changes in market conditions and other pertinent factors.

#### *Subchapter 240. Emergency Purchases*

#### § 240-1. Requisition and procedure for emergency purchases

Repealed Oct. 23, 1968; File No. 561

#### *Subchapter 241. Department of Commerce; Advertising, Promotion, Publicity and Public Relations*

§§ 241-1 to 241-11. Expired

#### *Subchapter 242. Public Works Contracts*

### DIVISION 1. GENERAL PROVISIONS

#### § 242-1. Definition of terms

Whenever in this subchapter, or in other contract documents, the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

(1) "A.A.S.H.O."—American Association of State Highway Officials.

(2) "A.S.T.M."—American Society for Testing Materials.

(3) "Bidder"—Any individual, firm or corporation submitting a bid on the standard proposal form for the work contemplated, acting directly or through a duly authorized representative.

(4) "Contract"—The agreement, executed and approved by the Department of Property and Procurement in the name of the Gov-

ernment of the Virgin Islands, and the successful bidder to whom the award is made, covering the performance of the work or services and the furnishing of labor and materials, by which the contractor is bound to perform the work or services and furnishing labor and materials and by which the Government of the Virgin Islands is obligated to compensate him therefor at the mutually established and accepted contract considerations. The contract shall include the plans, specifications, proposal, special provisions, performance bond, payment bond, and any other written mutual supplemental agreements and understandings that are required to complete the construction of the work or performance of the services in an acceptable manner, including authorized extensions thereof.

(5) "Contract item"—The obligation of the contractor, including the performance of all work or services and the furnishing of all labor and materials, described in the text of a specification item included in the contract or described in any subdivision of the text of the special provisions of the contract and identified as an "item" with title and number.

The word "item" in the contract shall be construed to mean "contract item" (notwithstanding that for convenience in the bid schedule, when a contract item involves more than one pay name, each pay name is given a place and number in the column headed "Items"). Provided, however, that solely for carrying out the purposes hereof, the word "item" (with or without modifiers) shall be construed to refer to an individual pay name of a contract item whether or not the given individual pay name constitutes an entire contract item.

A "major item" shall be defined as any item whose total cost, determined by multiplying the proposed quantity and the contract unit price, is equal to or greater than 5 percent of the total contract cost. All other contract items shall be considered as minor items. Items appearing as minor items in the original proposal shall be construed as becoming major items when increased to the extent that the total cost of the item is equal to or greater than 5 percent of the total original contract cost.

(6) "Contractor"—The individual, partnership, firm or corporation executing a contract as party of the second part, acting directly or through his lawful agents or employees, who is primarily liable for the acceptable performance of the work or services for

which he has contracted, and for the payment of all legal debts pertaining to the work.

(7) "Department"—The Department of Property and Procurement of the Government of the Virgin Islands.

(8) "Engineer"—The Commissioner of Property and Procurement acting directly or through an assistant or representative duly authorized by him, such assistant or representative acting only within the scope of the particular duties assigned to him or within the scope of the authority vested in him.

(9) "Equipment"—All machines, implements, power tools, livestock, tools and apparatus necessary for the proper construction and acceptable completion of the work or services, together with the necessary supplies for the operation, upkeep and maintenance of the same.

(10) "Extra work"—Work or services to be performed or labor and materials to be furnished by the contractor to complete the project in an acceptable manner but for which there is no applicable basis of payment, either direct or indirect, provided in the proposal or the contract.

(11) "Government"—The Government of the Virgin Islands.

(12) "Laboratory"—The official testing laboratory of the Department of Property and Procurement or such laboratory as may be designated by the Commissioner.

(13) "Payment bond"—The security furnished by the contractor to guarantee the prompt payment of all persons supplying labor and materials in the performance of the work or services provided in the contract. The penal sum in this bond shall be 50 percent of the total contract amount.

(14) "Performance bond"—The security furnished by the contractor to guarantee the completion of all the requirements of the contract within the original term of the contract and any extension that may be granted, in accordance with the terms of the contract. The penal sum in this bond shall be 50 percent of the total contract amount.

(15) "Plans and drawings"—The official approved plans, profiles, cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show required alinements and grades, layout, and design of structures, cross sections, accessory features and the particular location, character, dimensions and details of any public works to be performed.

(16) "Proposal"—The written offer of the bidder to perform the contemplated work or services and furnish the necessary materials, when made out and submitted on the approved proposal form, properly signed and guaranteed.

(17) "Proposal guarantee"—The required security submitted with the proposal to insure the execution of the contract and bonds for the performance of the work or services if the bidder is awarded the contract.

(18) "Resident engineer"—The authorized representative of the engineer, assigned direct charge of construction work.

(19) "Commissioner"—The Commissioner of Property and Procurement or his authorized representative.

(20) "Special provisions"—Special requirements, regulations or directions prepared to cover conditions peculiar to a particular project which are not thoroughly or satisfactorily expressed in these regulations. Special provisions are made a part of the contract for the express purpose of prevailing over all other specifications and over all plans relative to the contract. On each sheet of special provisions, for positive identification, there shall appear the caption "Special Provisions, Project .....".

(21) "Specifications"—The directions, provisions and requirements setting forth or relating to the method and manner of performing or paying for the work or services, or to the kinds and qualities of materials and labor to be furnished under the contract.

(22) "Subcontractor"—The individual, firm or corporation undertaking the execution of a part of the work or services under the terms of the contract by virtue of an agreement with the contractor, subject to the approval of the engineer.

(23) "Supplemental agreement"—A written agreement executed by the contractor and the Commissioner of Property and Procurement, with the consent of the contractor's surety, supplementing the contract to cover changes or changed conditions incidental to and necessary for the acceptable completion of the contract.

(24) "Change order"—A written agreement on an approved form signed by the contractor and the Commissioner of Property and Procurement, involving changes or additional work within the provisions of the contract and not considered of sufficient importance to require a "supplemental agreement".

(25) "Subheadings"—The subheadings printed in these specifications are intended for convenience of reference only and shall not be considered as having any bearing on the interpretation thereof.

## DIVISION 2. PROPOSAL AND CONTRACT

### § 242-11. Contents of proposal form

The Department will furnish bidders with standard proposal forms which will contain any supplemental specifications and special provisions applicable to the proposed work or services for which the forms are issued. The form will give the location and description of the project, the place, date and time of opening of the proposal, and will contain a schedule of the quantity estimated for each and every item upon which a bid is required, and is furnished expressly for the actual bid. The proposal form may give the time in which the work or services must be completed and the amount of the "proposal guarantee". All necessary government forms may be obtained from the Department of Property and Procurement.

All papers bound with or attached to the proposal form are a necessary part thereof and must not be detached. The executed proposal form will become a part of the contract.

### § 242-12. Interpretation of estimates

(a) The estimate of quantities of work or services to be performed and materials to be furnished appearing on the proposal forms and on the plans, is approximate only and is given for the sole purpose of comparing bids and determining the award of the contract. The Department does not expressly, or by implication, guarantee that the actual quantities will agree with those shown on the proposal form and the contractor shall not plead misunderstanding or deception of such estimate of quantities or the character, location or other conditions pertaining thereto. The Department reserves the right to increase or decrease any or all of the above-mentioned quantities of work or services or to omit any of them as may be deemed necessary, as herein provided.

(b) Only such quantities of the respective items of work or services actually performed and accepted or of materials furnished and accepted will be paid for.

### § 242-13. Examination of plans, specifications, and site of work

(a) The bidder is required to examine carefully the site of the work and to familiarize himself with conditions which will be encountered, and with the character, extent, quality and quantity of work or services to be performed and materials to be furnished. The bidder shall examine carefully the plans, specifications, special

provisions, proposal form, contract form and all documents pertaining thereto. The filing of a proposal by a bidder will be presumptive evidence that he has complied with all these requirements.

(b) Borings, profiles and water elevations shown on the plans were obtained for use of the Department in preparation of the plans for the work, and the bidder is hereby cautioned that the Department assumes no responsibility for the accuracy of this data. The bidder, in preparing his proposal, shall take cognizance of the difficulty of accurately classifying all materials encountered in making investigations, the possible erosion of stream channels and banks after survey data has been obtained, and the unreliability of water elevations other than for the data recorded.

#### § 242-14. Preparation of proposals

(a) The bidder shall submit his proposal on the form furnished by the Department. The bidder shall specify a unit price, in both words and numerals, written or printed in ink or typewritten, for each item for which a quantity is given, at which he proposes to do each item of work contemplated, and shall also show the product of the respective unit prices and quantities written in ink or typed in the numerals column provided for that purpose, and the total amount of the proposal obtained by adding the products. In case of conflict between the words and numerals, the unit price as written in words shall govern. Ditto marks are not considered writing, printing or typewriting, and shall not be used.

(b) Bidders are required to examine carefully the completed proposal form before submitting it. Any proposal which does not contain prices for each one of the items for which quantities are given shall be rejected. Bidders will be held responsible for any errors or omissions in their proposals.

(c) The proposal must be signed in ink. If the bidder is an individual, his post-office address shall be given; if the proposal is submitted by a firm or partnership, the name and post-office address of each member of the firm or partnership must be given, and the proposal must be signed by one of the members of the firm or partnership authorized to bind it in the matter. Proposals submitted by corporations must be signed by the president, secretary, or by an authorized representative, and the Commissioner may request satisfactory evidence of the authority of the officer signing in behalf of the corporation. The names of all persons signing shall be typed or printed below the signature. The telephone number of the office of the bidder shall be given on the proposal. Proposals submitted by corporations shall show the name of the state or political subdivision under the laws of which the corporation was chartered.

**§ 242-15. Rejection of proposals containing alterations, erasures or irregularities**

Proposals may be rejected if they show any alteration of form, are incomplete, contain any conditional bids or additions not called for, or alternate bids unless called for, or irregularities of any kind. Should the written unit price be illegible, the unit price in figures may be accepted as governing, at the option of the Commissioner, and minor corrections initialed by the bidder in ink may be accepted in the same manner.

**§ 242-16. Proposal guarantee**

Proposals must be accompanied by a certified check or bid bond in the amount stated in the proposal form, payable to the Government of the Virgin Islands. Proposals not accompanied by the stated guarantee will not be read or considered.

**§ 242-17. Delivery of proposals**

Each proposal submitted, together with the proposal guarantee, shall be enclosed in a sealed envelope plainly marked on the outside with the project number, location of the proposed improvement and the name and address of the bidder. When sent by mail, preferable registered, the sealed envelope containing the proposal shall be enclosed in a large envelope plainly addressed to "The Commissioner of Property and Procurement". Proposals may be delivered to the proper place designated in the proposal. Proposals received after the time specified in the advertisement for opening of proposals will be returned to the bidder unopened.

**§ 242-18. Withdrawal of proposals**

Proposals may be withdrawn provided the bidder's written request is received by the Commissioner prior to the time of opening of the proposals. Proposals may not be withdrawn after they have been opened at the appointed time.

**§ 242-19. Public opening of proposals**

Proposals will be opened and read publicly on the date and at the hour and place set in the advertisement for proposals. Bidders or their authorized agents are invited to be present.

**§ 242-20. Disqualification of bidders**

(a) More than one proposal from an individual, firm, partnership, corporation or association, under the same or different names, will disqualify all the proposals received from this bidder on this proposed contract. Reasonable ground for believing that any bidder is interested in more than one proposal on the same contract will cause the rejection of all proposals in which such bidder is interested.

(b) Any or all proposals will be rejected if there is reason for believing that collusion exists among the bidders, and the participants in such collusion will not be considered in future proposals for the same work.

(c) Unbalanced proposals may be rejected.

(d) The right is reserved to reject a proposal from a bidder who has not paid or satisfactorily settled all bills due for labor and material on former contracts or contracts in force at the time of opening of these proposals.

#### § 242-21. Competency of bidders

(a) Each bidder shall submit with his bid, or previously, an attested statement on the prescribed forms, of his business and technical organization available for the contemplated work or service, including his financial resources and his construction experience, comparable with the requirements of the project bid upon.

(b) The Government expressly reserves the right to reject any bid in which the facts as to business and technical organization, financial resources, or construction experience, compared with the requirements of the project bid upon, justify such rejection.

(c) Each bidder shall submit with his bid complete answers to the prescribed plan and equipment questionnaire showing in detail the proposed manner of handling the contract, the organization of forces, the equipment layout, camp setups and other pertinent information.

#### § 242-22. Material guarantee

Before any contract is awarded, the bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all materials to be used in the work on which the bid is submitted, together with samples which may be subjected to the tests provided in these specifications to determine their quality and fitness for the work, and the determination of award of contract may be based on the ability of the bidder to provide acceptable materials.

#### § 242-23. Consideration of proposals

After the proposals have been read they shall be checked, summarized and tabulated. For the purpose of award, the summation of the products of the approximate quantities by the unit-price bid will be considered the amount of the bid. Until the award is made, the Commissioner reserves the right to waive any informality or technical error in any proposal, to reject the proposals of any unqualified bidder or a failing contractor known as such by the Government, and to reject any and all bids as may be considered for the best interest of the Government.

#### § 242-24. Award of contract

A board of awards, appointed by the Commissioner shall pass upon all proposals received and award the contract subject to the approval of the Commissioner. The award of the contract, if made, will be to the lowest responsive bidder. The award, if made, will be made as soon as practicable after the opening of the proposals but in no case will an award be made until all necessary investigations of the responsibility of the bidder, to whom it is proposed to award the contract, have been completed. In the event the award is not made within the time specified after the opening of the proposals, the successful bidder shall have the right to withdraw his proposal without penalty. The bidder to whom award is made shall be notified by letter. He must execute the contract within 10 days after the date of this letter.

#### § 242-25. Return of proposal guarantee

Proposal guarantees of the three lowest bidders may be retained until after the contract has been executed and bond made. The proposal guarantees of all except the three lowest bidders will be returned within 5 days after opening of the proposals.

#### § 242-26. Requirement of contract bond

The bidder to whom the award is made shall file with the Department, at the time of execution of the contract, an acceptable corporate surety bond and or a letter of credit in a total final sum not less than one hundred per centum of the total contract price guaranteeing that the contractor will well and faithfully perform all the work or services within the time specified and will make prompt payment for all labor, equipment and materials required in the performance of the work or services. The form of bond shall be that provided by the Department and it shall be executed by a surety company licensed to do business in the Virgin Islands and acceptable to the Commissioner.

#### § 242-27. Execution of the contracts

The bidder to whom the contract is awarded shall execute the contract prepared by the Commissioner and deliver it, with the required contract bond, to the Department, within 10 days (exclusive of legal holidays) of the date of notice of award.

#### § 242-28. Approval of contract

The contract shall be signed in the name of the Government of the Virgin Islands by the Commissioner of Property and Procurement. No proposal shall be considered binding upon the Government of the Virgin Islands until the contract has been so signed by the Commissioner. The contractor will be furnished with a

signed and approved contract and immediately after the approval he will be formally notified to proceed with the work or services. Contract time shall begin 10 days after the date of this formal notice to proceed.

**§ 242-29. Failure to execute the contract**

Should the bidder to whom award is made fail or neglect to execute and deliver the contract and acceptable bond as provided herein, within 10 business days after the date of notification of the award of the contract, the award shall be annulled and the proposal guarantee filed with the proposal shall be forfeited, not as a penalty, but as liquidated damages, and shall go into the Treasury of the Virgin Islands. Award may then be made to the next lowest respective bidder or the work may be readvertised.

**§ 242-30. Intent of plans and specifications**

The intent is to provide for the construction to final and acceptable completion in every detail, within the time specified, of the work described therein which the contractor undertakes to do, in full compliance with the plans, specifications, special provisions, proposal and contract. The contractor shall perform the work in accordance with the lines, grades, dimensions, typical cross sections and other data shown on the plans or as modified by written order. The contractor shall furnish all materials, equipment, tools, all labor and everything necessary to execute the work in accordance with the contract.

**§ 242-31. Special work**

Construction or conditions which have not been anticipated by these specifications will be covered by special provisions which are attached to the proposal and are a part of the contract.

**§ 242-32. Increased or decreased quantities of work**

(a) The Department reserves the right to make any alterations in plans and changes in the quantities of work and in the quantity of materials to be furnished as may be necessary or desirable to fully complete the proposed construction in a satisfactory manner and the contractor shall perform the work in accordance with the changed plans. It is recognized that these changes are normal and expected adjustments and that they do not permit changes or modifications of the contract prices provided the resulting overruns or underruns from the quantities in the proposal do not exceed reasonable percentages. Those percentages and the method to be followed are fixed as a part of the contract, as follows:

(1) If any or all items are changed resulting in a sum total change of 25% or less of the total cost of the contract calculated from the original proposal quantities and the original contract unit prices, such change shall not be considered to involve or permit any increase or decrease in the unit prices due the contractor, or any adjustments thereof, and payment shall be made for the actual quantities at the original contract prices, except in the case of major items described in paragraph (3).

(2) Likewise, within the above total change but with respect only to minor items and regardless of the percent of change of each or any such item, any changes (individual or cumulative) shall not be considered to involve or permit any increase or decrease in the unit prices due the contractor or any adjustment thereof, and payment shall be made for the actual quantities at the original contract price.

(3) It is mutually agreed that, if demand is made by either party overruns or underruns of more than 25% of the total cost, individually, of one or more major items, calculated from the original proposal quantities and the original contract unit prices, shall require a negotiated change of unit price which shall be covered by a supplemental agreement signed by the Commissioner and the contractor, setting forth the necessity for the change and the adjustment of unit prices agreed upon as satisfactory to both parties.

(4) It is mutually agreed that, if demand is made by either party, overruns or underruns in any or all items resulting in a sum total change of more than 25% of the total cost of the contract, calculated from the original proposal quantities and the original contract unit prices, shall require a supplemental agreement signed by the Commissioner and the contractor, setting forth the necessity for the change and the adjustment of unit prices agreed upon as satisfactory to both parties.

(5) The contract does not obligate the contractor to perform at original contract unit prices, overruns or underruns generating a total in dollars or in extent of more than 25% of the original contract.

(b) In the event a satisfactory adjustment in price cannot be reached for any item or items, the Department reserves the right to eliminate the increased quantity from the contract and may require the contractor to perform the work by force account or may do the work in any other manner as may be deemed best for the Government.

**§ 242-33. Extra work**

(a) Work or materials required for the satisfactory completion of the contract and not included under the unit price bid for an item shall be designated as extra work. This extra work may be included in the contract by change order of the engineer and covered by supplemental agreement. The Department may require the contractor to submit a written proposal for the additional items. The work shall not be started before the supplemental agreement has been executed by the Commissioner and the contractor.

(b) The contractor shall perform this extra work in accordance with the intent of the specifications and under the direction of the resident engineer. No claims for extra work will be paid unless the work was authorized in writing prior to beginning construction. If agreement cannot be reached on the price for the items involved, the engineer may order the work done by force account or may do it in any other manner deemed best for the Government.

**§ 242-34. Detours on highway construction**

(a) Any existing traveled road within the limits of the contract shall be kept continuously open for such public traffic as used the road before construction began. All trails, roads and highways intersecting the road under construction shall be kept open and passable, temporary approaches and crossings shall be provided and maintained in safe condition. In lieu of maintaining traffic along the improvement, the contractor may bypass the traffic over detours constructed and maintained at his own expense. The location, character of construction and maintenance of all detours shall be approved by the Commissioner. All expense of construction and maintenance of acceptable trafficways over the project and of detours and passageways shall be borne by the contractor without direct compensation except such detours as may be covered by an item in the proposal for "Special Detours". If such an item is included, the work will be covered by a special provision and the detour will be shown on the plan for the project.

(b) If during the construction under this contract adjacent sections of highway are under construction by the Department, the contractor shall allow access to the other sections over that part of the road already constructed which is in condition to support traffic, provided authority is granted by the Commissioner for the use of the highway for this purpose. This authorization shall be furnished to the contractor in writing and it shall prescribe the limitations and regulations to be observed by the traffic thus granted permission to use the roadway. It is understood that the organization or contractor granted such authority shall be held responsible for any or all damages which may be caused to any of the roadway already completed or under way on this contract, and both parties shall be bound to observe the decision of the Commissioner in regard to the estimated damages.

#### **§ 242-35. Structures and obstructions**

(a) All structures, fences, buildings, or encumbrances of any character, upon or within the limits of the project, shall be carefully removed by the contractor and disposed of as indicated on the plans or directed by the resident engineer. Any material so removed which the resident engineer may order salvaged shall be carefully stored and remain the property of the Government and may be used in the construction if so ordered. Unless otherwise provided, material from any existing old structure may be used temporarily by the contractor in erection of the new structure with the approval of the resident engineer. Unnecessary damage to such material shall be avoided.

(b) Payment for this work shall not be made directly except for specific cases expressly identified for payment as separate items in the proposal and covered by special provisions.

#### **§ 242-36. Materials found on job**

The contractor, with the approval of the resident engineer, may use in the construction any suitable stone, gravel, sand or other acceptable material found in the earthwork operations and will pay only the corresponding contract unit price therefor, but, if required, he shall provide at his own expense sufficient suitable material of similar nature to complete the portion of the work which was originally contemplated to be completed with such used material. No charge for materials so used will be made against the contractor except that he shall replace it as provided above. The contractor shall not excavate or remove any material from within the right-of-way or property which is not within the excavation as indicated by the plans and established in the field, without prior written authorization by the resident engineer.

#### **§ 242-37. Final cleaning up**

(a) The work will not be considered completed and ready for final acceptance until all the details of every item have been fully completed in accordance with the plans and specifications in a manner acceptable to the engineer. The area covered by the construction, all borrow pits and all ground occupied by the contractor in connection with the work shall be cleared of all rubbish, excess materials, temporary structures and buildings, equipment and materials, and all fragmentary rocks and boulders, wasted excavation and unsightly material shall be disposed of, so as to leave the entire project in a neat and presentable condition. Temporary detours visible from the roadway and used only during construction shall be obliterated. Adjacent property, public or private, used during the construction, shall be cleaned and any damages incurred

during the construction shall be repaired in an acceptable manner. Slope intersections shall be neatly rounded as shown on the plans and all gutters and ditches shall be cleaned and left so that they will drain. Borrow pits, quarries and other excavations in connection with the work shall be trimmed up in a workmanlike manner and surplus material removed or leveled and necessary drainage shall be provided.

(b) As a part of the completion of any structure, all excess material cofferdams, construction buildings, temporary structures and debris resulting from construction shall be removed. Falsework piles shall be removed to the ground level. Where work is in a stream, all debris shall be removed from the bed of the stream and the stream channels, structure and highways left unobstructed and in a neat and presentable condition.

(c) Materials cleared from the construction area and deposited on property adjacent thereto will not be considered as satisfactorily disposed of, unless approved by the resident engineer.

(d) This work shall be considered necessary work auxiliary to the accomplishment of the contract and no direct payment shall be made therefor.

### DIVISION 3. PERFORMANCE

#### § 242-51. Authority of engineer

The engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretations of the plans and specifications, and the acceptable fulfillment of the contract on the part of the contractor. His decision shall be final and he shall have executive authority to enforce such decisions and orders as the contractor fails to carry out properly and promptly.

#### § 242-52. Plans and drawings

(a) The Department will furnish the contractor, without charge, with 2 complete sets of plans and, on written request by the contractor, additional sets of plans will be supplied without charge to a maximum of 5 sets, including the 2 original sets. Plans will show alinement, profile, typical section and general sections. Structure plans will show general features and sufficient details necessary to give a comprehensive idea of the proposed structures.

(b) The contractor shall furnish necessary working and detail drawings which shall be approved by the engineer before any work involved in them is started, but such approval shall not relieve the contractor of any of his responsibilities under the contract and of

the responsibility for the satisfactory completion of the improvement. Any material ordered prior to the approval of such plans shall be at the contractor's risk. No deviation from said approved plans will be allowed without the engineer's written consent.

(c) Working drawings for steel structure will consist of shop erection, and other working drawings including stress sheets, camber diagrams, erection diagrams, bending diagrams for reinforcing steel, shipping statements giving lists of parts, lists of field rivets and bolts and weights of parts. Working drawings for all structures shall include, if necessary, layouts for cribs, cofferdams, falsework, centering form work, bracing, and masonry layout diagrams. Working drawings for concrete structures will consist of such detailed plans as may be required for the successful performance of the work and are not included in the plans provided by the Department.

(d) Such plans furnished must conform to the general plans and drawings, to the general stress sheets and to the specifications. It is mutually agreed that approved general plans furnished by the Department shall prevail over any plans, drawings or details prepared by the contractor or his agents.

(e) Shop drawings shall be 22 inches by 36 inches in size. Two sets of blueprints shall be submitted to the engineer and one set will be returned to the contractor with desired revisions noted thereon, unless otherwise required by the special provisions. After correction and approval, five additional sets of prints or copies shall be furnished the Department. Upon completion of the fabrication, the original tracing or one set of vandyke negatives shall be given the Department. No payment for these plans or drawings shall be made.

(f) It is the responsibility of the contractor to verify all quantities of material shown on the plans before ordering same, as payment is made for acceptable materials complete in place, and materials rejected, due to improper fabrication or excess quantity or for other reasons within the control of the contractor, will not be paid for regardless of the quantity or dimensions shown on the plans. The resident engineer, when requested, will check any or all material orders prepared by the contractor, but such check will not relieve the contractor of responsibility.

#### § 242-53. Conformity with plans and allowable deviations

All work under the contract must conform strictly to the approved plans, and finished surfaces shall be true to line, grade, cross section and dimensions within the limits of reasonable tolerance as established in the specifications or on the plans, or de-

terminated by the engineer. Any deviation from the plans and approved working drawings that may be required by the exigencies of construction or otherwise will in all cases be determined by the engineer and authorized by him in writing.

**§ 242-54. Coordination of plans, specifications, and special provisions**

The specifications, the approved plans, the special provisions, the advertisement for proposals, bonds, and all documents affecting the work, duly issued by the Commissioner or his authorized representative to the contractor, are essential parts of the contract. They are intended to be complementary and a requirement occurring in one is as binding as though occurring in all. In case of discrepancy, figured dimensions shall govern over scaled dimensions, plans shall govern over the specifications and special provisions shall govern over the specifications and over all plans.

**§ 242-55. Cooperation by contractor**

The contractor shall have available on the job at all times, during the construction period, one complete copy of the contract, all approved plans, specifications, special provisions and authorized alterations. The contractor shall give the work his constant attention, shall facilitate the progress thereof and shall cooperate with the engineer in every way possible. He shall have at all times a competent and satisfactory superintendent on the job, authorized to receive orders and act for him. In the performance of the work under this contract, the contractor shall so conduct his operations as to avoid interference with any other contractors.

**§ 242-56. Construction stakes**

(a) The engineer will furnish and set construction stakes establishing lines, slopes and grades in road and similar work and center line and bench marks for bridge and structure work, drainage and protective accessory structures and appurtenances as he may deem necessary, and will furnish the contractor with all necessary information relating to lines, grades, slopes and technical data necessary to insure complete and satisfactory construction in accordance with the contract. The contractor shall furnish advance notice of his operations to the engineer so that all the work may be staked out well ahead of his requirements. The contractor shall furnish, free of charge, all additional stakes, all templates, batter boards, and other material necessary for marking and maintaining points and lines given, and shall furnish the engineer such labor as he may require to establish lines and points necessary to the execution of the work to satisfactory completion. The contractor shall be held responsible for the preservation of all stakes and marks, and if any of the construction stakes or marks have been carelessly or willfully destroyed or disturbed by the contractor, the

cost of replacing them shall be charged against him and shall be deducted from the payment of the work. In case of changes or changed conditions which involve any changes in stakeout, the contractor shall cooperate fully with the engineer and facilitate the prompt establishment of the field control for the altered or adjusted work.

(b) If requested by the contractor the engineer may give him authorization to stake and mark, with the contractor's own personnel and at his expense, lines and elevations for the construction of the work. The engineer at any time may check the contractor's stakes and marks as to conformance with the requirements of the plans and specifications.

#### § 242-57. Authority of inspectors

Inspectors appointed by the Commissioner will be fully empowered to represent the Commissioner in all matters pertaining to inspection of work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation or manufacture of the materials to be used. In case of any dispute between the contractor and an inspector as to material furnished or the manner of performing the work, the inspector shall have the authority to reject materials or suspend the work until the question at issue can be referred to and decided by the engineer. He shall not be authorized to revoke, alter, enlarge, relax or release any requirements of the specifications, nor to approve or accept any portion of the work, nor to issue instructions contrary to the plans and specifications. Any advice the inspector may give the contractor shall in no way be construed as binding the engineer nor the Department in any way, nor as releasing the contractor from fulfillment of any of the terms of the contract.

#### § 242-58. Inspection

(a) The engineer and the inspector shall have free access, at all times, to all parts of the work and to all materials intended for use in the work. The contractor shall furnish the engineer with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the specifications and contract. No work shall be done nor materials used without suitable supervision or inspection by the engineer or his representative. Failure to reject any defective work or material shall not in any way prevent later rejection when such defects are discovered. Neither shall such failure obligate the Department to final acceptance. The contractor shall furnish the engineer and inspector such information and assistance as may be required to make complete and detailed inspections. If the engineer requires it, the contractor, at any time before acceptance of the work,

shall remove or uncover such portions of the finished work as may be directed. After examination by the engineer, the contractor shall restore said portions of work to the standard required by the specifications. Should the work thus exposed and examined prove acceptable, the uncovering or removing and replacing of the covering or making good of the parts removed shall be paid for as extra work; but should the work so exposed and examined prove unacceptable, the uncovering and replacing of the covering and making good the parts removed shall be at the contractor's expense.

(b) When the United States Government is to pay a portion of the cost of, or is directly affected by the work covered by this contract, the work involved shall be subject to inspection by its authorized representatives. Such inspection shall not, in any sense, make the United States Government a party to this contract, and will in no way interfere with the rights of the Department or the contractor.

#### **§ 242-59. Removal of defective and unauthorized work**

Any element of the work, where the variation from allowable specified limits exceeds the applicable limitation or where the plans and specifications are not complied with in every respect, shall be corrected before final acceptance. All work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the contractor at his own expense. Work done beyond the lines and grade as shown on the plans or as given, except as specifically provided or ordered in writing by the engineer, or any extra work done without written authority, will be considered as unauthorized and done at the expense of the contractor and will not be paid for. Work so done may be ordered removed at the contractor's expense. Upon failure on the part of the contractor to comply with any order of the engineer made under the provisions of this paragraph, the engineer will have authority to cause defective work remedied or removed and replaced and unauthorized work removed, and the cost thereof may be deducted from any money due or to become due to the contractor.

#### **§ 242-60. Claims for extra work**

In any case where the contractor deems extra compensation is due him for work or materials not clearly covered in the contract, or not ordered by the engineer as extra work as defined herein,

the contractor shall notify the engineer, in writing, of his intention to make claims for such extra compensation before he begins the work on which he bases the claim. If such notification is not given before starting work, or the engineer is not afforded complete and proper facilities by the contractor for keeping strict account of actual cost, then the contractor hereby agrees to waive the claim for such extra compensation. The filing of such motive by the contractor and the keeping of costs by the engineer shall not in any way be construed as proving the validity of the claim. When the work has been completed, the contractor shall immediately file his claim for extra compensation and it will be presented to the Commissioner by the resident engineer with his recommendations. If approved, change order will be issued as prescribed in this title.

#### § 242-61. Final inspection

Whenever all the materials have been furnished and all work has been performed, including final cleaning up as contemplated by the contract, all in accordance with plan specifications, the resident engineer shall notify the Commissioner that said work is completed and ready for final inspection. The final inspection shall be made by the Commissioner or his designees as soon as reasonably possible within 10 days of the receipt of the notice. The contractor will be notified of the date the final inspection will be made. If all construction provided for and contemplated by the contract is found completed to the satisfaction of the engineer, this inspection shall constitute the final inspection and the engineer shall recommend to the Commissioner the final liquidation of all work done, the date of completion to be established as of the date of the notice of the resident engineer. If, however, upon inspection by the engineer appointed by the Commissioner to make the final inspection, it is found that any work, in whole or in part, is unsatisfactory, the engineer shall give the contractor the necessary instructions as to replacement of material and performance or reperformance of work necessary and prerequisite to final completion and acceptance, and the contractor forthwith shall comply with and execute such instructions. Upon satisfactory replacement and performance or reperformance of such work, the resident engineer shall notify the Commissioner, and another inspection shall be made which will constitute the final inspection if the said material is found to have been acceptably replaced and the work completed satisfactorily. In such event the date of this last notice of the resident engineer will be established as the date of completion of the contract. The date of completion thus established shall be used in calculating the actual time of performance of the work.

### § 242-62. Sources of supply and quality of material

(a) Only materials conforming strictly to the requirements of these specifications, first class in quality and approved by the engineer prior to use, shall be used in the work. All materials proposed to be used may be inspected or tested at any time during their preparation or use. The source of supply of each of the materials shall be approved by the engineer before delivery is started and representative samples shall be submitted as required by the engineer. If tests indicate that the material will not meet the requirements of the specifications, other sources shall be developed. The approved source of supply shall stand approved only so long as material produced conforms to the requirements. No materials which, after approval, have in any way become unfit for use shall be used in the work.

(b) The Commissioner may acquire and make available to the contractor the right to use materials from sources designated on the plans, together with the right to use such property adjacent thereto as may be required for plant site, stockpiles and hauling roads. When sources of local materials are thus designated for use, the contractor shall satisfy himself as to the quantity of acceptable material available at such locations and the Government will not assume any responsibility as to the quantity of acceptable material at the designated locations. When sources of supply are thus indicated on the plans, the conditions governing the use will be fully set forth in the special provisions attached to the contract. Unless this arrangement is indicated on the plans for specific materials and covered by special provisions, all materials required for the satisfactory completion of the work shall be furnished by the contractor.

### § 242-63. Samples and tests

(a) The approval of preliminary samples shall not be considered as a guarantee that all materials from the same source will be accepted. Any material which has been sampled and accepted may be resampled and retested at any time before use. Samples upon which acceptance or rejection of materials is based shall be taken by a representative of the Department in accordance with the methods prescribed in the A.A.S.H.O. or the A.S.T.M. standards or any other standards especially adopted and set forth in the special provisions. The contractor shall afford such facilities as the engineer may require for collecting and forwarding samples, and shall not use the materials represented by the samples until they have been found to satisfy the requirements of the specifications. The contractor in all cases shall furnish the required samples without charge.

(b) Tests of materials will be made by and at the expense of the Department, unless otherwise provided. The tests shall be made in accordance with the methods shown in the specifications using standards prescribed by the A.A.S.H.O. or the A.S.T.M. Tentative specifications or any other standards especially adopted and set forth in the special provisions shall have precedence over standard specifications and the applicable standard and tentative specifications current at the time of advertisement for bids shall apply.

(c) Periodic inspections and tests of all materials for the construction will be made to insure that all material is satisfactory and meets all the requirements of the governing specifications. When the volume of materials, construction progress or other conditions warrant, the Government reserves the right to make inspections and tests of materials at the source of supply and to exercise field control over quality and gradings to insure the delivery of acceptable satisfactory material on the project. Scales, measures and weighing equipment may be checked at any time by the Department.

#### § 242-64. Storage of materials

Materials requiring storage shall be located so as to facilitate prompt inspection and shall not be piled except where and as permitted by the engineer. They shall be so stored as to insure preservation of their quality and fitness for the work and may be rejected for failure to meet specification requirements at the time of placing in stockpiles or storage as well as at the time of delivery, and all materials shall be inspected and accepted prior to use in the work. Stockpile sites shall be restored as nearly as possible to their natural condition immediately after removal of the stored material.

#### § 242-65. Defective material

All materials not conforming to the requirements of the governing specifications shall be considered as defective and shall be removed immediately from the site of the work unless permitted to remain by the engineer. No defective material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure on the part of the contractor to comply forthwith with any order of the engineer made pursuant to the provisions of this section, the engineer shall have authority to remove and replace defective material and to deduct the cost of removal and replacement from any money due or to become due to the contractor.

#### § 242-66. Laws to be observed

(a) The contractor at all times shall observe and comply with all Federal and local laws and regulations in any manner affecting the work, the equipment or materials used in the proposed construction, and those employed on the job or in the direction of the same, and with all such orders or decrees as exist at present or may be enacted later by bodies or tribunals having any jurisdiction or authority over the work. The contractor shall save harmless or indemnify the Department and its representatives, officers, agents and servants against any claim or liability arising from or based on the violation of any such law, regulation, order or decree, whether by himself or his employees.

(b) The contractor is required by law to pay insurance premiums to cover all the laborers to be employed and special attention is called to the Workmen's Compensation Law. If premiums and taxes legally assessed have not been paid as required by law, the amount required shall be deducted from any payments due or to become due to the contractor.

#### § 242-67. Permits and licenses

The contractor shall procure all required permits and licenses and pay all fees, royalties and charges and give all notices necessary and incidental to the due and lawful prosecution of the work. All equipment requiring licenses shall bear Virgin Islands licenses and any others that may be legally necessary.

#### § 242-68. Patented devices, materials and processes

The contractor shall defend all suits or claims for infringement of any patent rights and shall save the government harmless from loss on account thereof. The contractor shall be solely responsible for the use of any patented article, process or appliance in connection with the work contracted, as any payment due to patent holders for such use is supposed to be computed in the price bid.

#### § 242-69. Restoration of surfaces opened by permit

The contractor shall not allow any person or persons to make an opening in any surface unless written authority is given by the Commissioner prior to the starting of the work. When such openings are to be made the contractor shall make or repair them upon written order of the Commissioner. Minor repairs shall be performed by the contractor at his own expense and repairs of any considerable extent shall be covered by a work order specifying the character of work to be done and the methods to be used.

#### § 242-70. Federal participation

When the United States Government is to pay a part of the cost of construction, the construction work will be subject to inspection by representatives of the Federal Government as may be necessary to meet the requirements of the Federal laws and regu-

lations, but such inspection will in no sense make the Federal Government a party to this contract. On projects where the Federal Government participates in the cost, the contractor shall extend the same courtesies to the representatives of the Federal Government as are required to be extended to representatives of the Government.

**§ 242-71. Sanitary provisions**

The contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of local health departments and officials having jurisdiction thereof. He shall neatly clean up all campsites, burn or dispose of all rubbish and perishable material and have the premises in a neat and sanitary condition when he has completed the occupancy of the site.

**§ 242-72. Public convenience and safety**

The contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and to protect the traveling public. On highway projects, when the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade in such condition that the public can travel over it in reasonable comfort and safety. Material stored on the highway shall be so placed as to cause only such obstruction and inconvenience to the traveling public as is considered unavoidable. No public road shall be closed by the contractor except by express permission of the engineer. The contractor shall provide and maintain at his expense such temporary roads as may be necessary to provide access to driveways, houses and buildings along the work, as well as temporary approaches to and crossings of intersecting highways. When the contractor is required, either under the terms of the contract or by written order of the engineer, to construct temporary bridges or crossings, his responsibility for accidents shall extend to the roadway approaches and structure proper of such temporary bridge or crossing. The contractor shall comply with all applicable rules of the Commissioner of Labor.

**§ 242-73. Barricades, danger, warning and detour signs**

(a) The contractor shall at his expense provide, erect and maintain all necessary barricades, suitable and sufficient red lights, danger signals, detour and other signs, shall provide a sufficient number of watchmen and take all necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective, substantial barricades and obstructions shall be illuminated at night. Barricades shall be painted white or black and white to increase their visibility.

Suitable warning signs illuminated at night by flares or lanterns shall be erected at proper distances from barricades or where surfacing ends or any danger to traffic may be encountered. Warning signs shall be erected outside the project and 150 meters from each end of the project and 150 meters in advance of any place where operations interfere with the use of the road by traffic, including all intermediate points where the new work crosses or coincides with the existing road. Warning signs shall be constructed and erected in accordance with plans furnished or as directed by the resident engineer. Well constructed, substantial detour signs shall be provided, erected and maintained by the contractor where traffic is detoured, and sufficient signs shall be provided to clearly mark the route throughout its entire length. All lights for illumination of signs, barricades and obstructions shall be kept burning from sunset to sunrise. The contractor shall be held responsible for all damage to the work from traffic, pedestrians or animals or any other cause due to the failure of any barricades, warning signs or illumination.

(b) No direct payment shall be made for furnishing, erecting and maintaining barricades, signs or any of the work covered under this heading. The barricades, signs and illumination shall be subject to approval of the engineer, but his approval shall not relieve the contractor of any responsibility for the adequate protection of the work and the traveling public. The barricades, signs and detour signs shall all be maintained until the road is completed and shall be removed from the project as part of the final cleaning up.

(c) Special protection devices may be covered by plans and special provisions and payment provided, or if no payment is specified they shall be provided, erected and maintained in the same manner as herein required.

#### § 242-74. Explosives

(a) When the use of explosives is necessary for the performance of the work, the contractor shall use the utmost care so as not to endanger life or property. Blasting operations shall be conducted under the most careful and experienced supervision. Only light shooting will be permitted without specific written permission from the engineer. The contractor shall keep the resident engineer informed as to his drilling and blasting operations and shall obtain his approval where required before blasting. He shall use suitable mats or other approved means to smother blasts when required. The contractor shall adopt precautions in using explosives to prevent damage to surrounding objects and the scattering of rocks, stumps or other debris outside of the roadway slopes. Nothing herein shall release the contractor from full responsibility for damage or injury resulting from the use of explosives.

(b) All explosives shall be stored in a secure manner and in conformity with local laws and regulations. Storage places shall be substantial in character and shall be kept locked and shall be clearly marked "DANGER—EXPLOSIVES".

**§ 242-75. Protection and restoration of property**

(a) The contractor shall be responsible for the preservation of all public and private property, monuments, telephone and telegraph lines and other public and private utilities, etc., along and adjacent to the roadway, shall use every precaution necessary to prevent damage to pipes, conduits and underground structures, and cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement in order that their operations may progress in a reasonable manner, and that duplication and rearrangement of work may be reduced to a minimum and that services rendered by these parties will not be interrupted unnecessarily. Any utility lines injured by the contractor shall be repaired at once at his expense. The contractor shall protect carefully from disturbance or damages all land monuments and property marks and notify the responsible parties if they must be moved or changed in any way, and shall not disturb them until an authorized agent has witnessed or otherwise referenced them and directed their removal. All trails and roads adjacent to or intersecting the work shall be protected from damage. The contractor shall be responsible for the preservation of all artifacts, objects of art, old curiosities and minerals found on the right-of-way or in the construction operations and he shall report them to the engineer. All such articles shall be the property of the Government and shall be extracted and removed in accordance with the orders of the engineer.

(b) When or where any direct or indirect damage or injury is done to public or private property by or on account of an act, omission, neglect or misconduct in the execution of the work, or in consequence of the nonexecution thereof on the part of the contractor, such property shall be restored by or for the contractor and at the contractor's expense to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring the same, or he shall make good such damage or injury in a manner acceptable to the responsible parties and to the satisfaction of the engineer.

(c) No advertising signs of any character will be allowed to be erected on any part of the work and no inscription shall be put on any part of the work without proper authorization.

**§ 242-76. Responsibility for damage claims**

The contractor shall save harmless the Government and all its officials, representatives and agents from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property through the acts of the contractor or his agents or servants, or by or in consequence of any neglect on the part of the contractor, or his agents or servants, in safeguarding the work, or through the use of unacceptable materials in the construction of the work, or by or on account of any claims or amounts recovered for any infringement of patent, trademark or copyright, and for any claims or amounts arising from or recoverable under the workmen's compensation laws or any other laws, orders or decrees. The Contractor shall be responsible for all damage or injury to property of any character during the execution of the work resulting from any act, omission, neglect or misconduct in the manner or method of executing said work or due to the nonexecution of said work at any time, or due to defective work or materials, and such responsibility shall continue until the work has been completed and accepted by the Commissioner.

**§ 242-77. Opening of section of highway to traffic**

The work under construction, or any section thereof, shall not be opened to traffic until so directed or authorized by the engineer. When any substantial portion or feature of the project is satisfactorily completed, it may be opened to traffic with the written permission of the Commissioner. Such action shall not constitute final acceptance of the work or any part of it, or a waiver of any of the provisions of the contract. The written order of the Commissioner shall contain instructions as to the maintenance of the portion of traffic. Any damages to the highway that may occur on such section, not attributable to traffic, shall be repaired by the contractor at his expense except that any unavoidable slides that may occur shall be removed and this work paid for in the same manner as if the road had not been opened to traffic.

**§ 242-78. Contractor's responsibility for work**

(a) Until the final acceptance of the work by the Commissioner, as evidenced in writing, the work shall be under the charge and care of the contractor, and he shall take every necessary precaution to protect it from injury or damage to any part thereof by the action of the elements or from any other cause whatsoever, whether arising from the execution or nonexecution of the work.

The contractor shall rebuild, restore and make good any injuries or damages to any portion of the work occasioned by any of the above causes, before its completion and acceptance, and shall bear the expense thereof, except damages to the work due to unforeseen causes beyond the control of and without fault or negligence of the contractor, including but not restricted to acts of God or of the public enemy, acts of the Government, slides found by the engineer to have been unavoidable, and ordinary wear and tear on any section of the road opened to traffic by order or with the written permission of the Commissioner.

(b) An act of God is construed herein to mean an earthquake, hurricane or other cataclysmic phenomenon of nature not ordinarily occurring. A rain, windstorm, flood or other natural phenomenon of normal intensity for the particular locality shall not be construed as an act of God and no reparation to the contractor shall be made for damages to the work resulting therefrom. The engineer shall be the sole judge as to whether a particular phenomenon shall be classed as an act of God or as a normal occurrence, and his measurement of quantities and determination of repairs and replacements shall be the basis of determination of the payment for work done if such payment is authorized and approved by the Commissioner.

(c) In case of suspension of work from any cause whatever, the contractor shall be responsible for all materials and shall properly store them, if necessary, and shall provide suitable drainage for the roadway and erect necessary temporary structures as required, all at his expense. The contractor shall continuously maintain, during any such period of suspension, all newly-planted sod, grass or tree growth in a growing condition, and shall protect such vegetative growth from injury. All material not incorporated in the work shall be considered as the responsibility of the contractor and shall not be used when work is resumed until it has been accepted by the engineer.

#### **§ 242-79. Public officials not personally liable**

In carrying out any of the provisions of this contract or exercising any power or authority granted to the Commissioner, and any authorized engineers, agents or assistants by law or by this contract, there shall be no liability, either personally or as officials or representatives of the Government, it being understood that in such matter they act as the agents and representatives of the Government.

**§ 242-80. Waiver of legal rights**

(a) The Government shall not be precluded or stopped by any inspection, measurement, estimate or certificate, any order by the Department for the payment of money, any payment for or acceptance of any work or an extension of time, or any possession taken by the Department, from showing the true amount and character of the work performed and materials furnished by the contractor, nor from showing that any measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract. The Government shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the contractor and his sureties such damages as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance by the Commissioner or by his representative, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession by the Commissioner or his agents, shall operate as a waiver of any portion of the contract or of any powers herein reserved, or of any rights to damages. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

(b) The Department reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet the requirements of the contract and specifications. Upon conclusive proof of collusion, error or dishonesty between the contractor or his agents and the engineer or his assistants being discovered in the work after final payment has been made, the Government reserves the right to claim and recover by process of law such sums as may be sufficient to correct the error or make good the defects in the work resulting from such error, dishonesty or collusion.

**§ 242-81. Subletting or assignment of contract**

(a) The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the total contract cost, except that any items designated in the contract as "specialty items" may be performed by subcontract and the cost of any such "specialty items" so performed may be deducted from the total contract cost before computing the amount of work required to be performed by the contractor with his own organization.

(b) No portion of the contract shall be sublet except with the written consent of the Commissioner. The term "subletting" shall be understood to mean the arrangement with any party or parties

to execute a part of the contract work. Request to sublet, assign or otherwise dispose of any portion of the contract shall be in writing, and shall show that the party or organization which will perform the work is particularly qualified by experience and adequately equipped to execute the work in a satisfactory manner. The subcontractor shall comply with all the requirements of the contract and will be required to pay the minimum wage for labor and conform to the minimum regulations for deductions for board, if furnished, as stated in the proposal. No work shall be performed or materials incorporated in the work by a subcontractor, until a properly executed subcontract has been filed and approved by the Commissioner. Written consent to sublet any portion of the contract shall not be construed to relieve the contractor of any responsibility for the fulfillment of all the requirements of the contract. If the amount of the subcontract or the nature of the work to be performed thereunder warrants, the Commissioner may require the subcontractor to furnish, for the benefit of the contractor, bonds in an amount proportioned to the amount of his subcontract, and for the same purposes and under the same specifications as those of the general contract.

(c) The Commissioner reserves the right to remove from the job forthwith any subcontractor, and his equipment, who operates in violation of these requirements or who is not executing the work in a manner satisfactory to the engineer, and the subcontractor shall not again be employed on the job. Any costs incurred by the Department in thus dealing with a subcontractor shall be charged to the contractor and deducted from any monies due him.

(d) No contract shall be assigned in whole or in part to any party or parties, unless prior written permission is given by the Commissioner.

#### § 242-82. Performance of work

(a) The contractor shall begin work within 10 days after the date of the formal notice to proceed. He may assemble materials and start preliminary work as soon as he is notified of the award, but no responsibility for acceptance of the work performed shall be assumed by the Department until and unless the contract is actually signed by the Commissioner. The contractor within 20 days after the award is made, shall file with the Commissioner a time chart or schedule of proposed progress, a plan of construction including a detailed statement of the source of all materials to be

used in the work, and the dates when they will be delivered or made available on the construction, and the proposed detailed method of carrying on the work, including a full statement of equipment and equipment layout for the job. This progress chart and statement of operations shall show the dates of completion of the major items of the work, and, if not satisfactory to the Commissioner, it shall be revised to provide for the use of adequate and sufficient equipment and force, and a method of operation which will insure the completion of the work within the contract time. This information, when it has all been approved by the Commissioner, shall become a part of the contract.

(b) The contractor shall start work on the part of the project designated by the engineer, and the work shall be conducted in such a manner and with sufficient materials, equipment and labor as are considered necessary to insure its completion in accordance with the plans, specifications and contract, within the time set forth in the contract and proposal. Should the execution of the work be discontinued for any reason, the contractor shall notify the engineer at least 24 hours in advance of resuming operations. The rate of progress shall be compared with the time chart as the work progresses, and if the contractor falls behind schedule he will be required to employ more equipment and labor or to modify his operations to insure the completion within the time set in the contract. Serious delay in progress will be brought to the attention of the surety with the notice that they will be held jointly responsible with the contractor for the satisfactory completion of the work within the time set.

#### § 242-83. Limitation of operation

(a) The contractor shall at all times conduct the work in such a manner as will insure the least practicable interference with traffic and shall arrange convenient detours if required. He shall not open up work to the prejudice of work already started, and the engineer may require the contractor to finish a section on which work is in progress before work is started on any additional section. The contractor will be held responsible for any damage done by him or his agents to work performed by any other contractor.

(b) The location of temporary roads, quarries, pits, camp buildings and storage and other construction buildings shall be approved in writing by the engineer before they are built or opened up. All buildings and grounds shall be maintained in sanitary and slightly condition during the construction period and construction buildings on public lands or on private land, if directed, shall be removed upon completion of the contract and the site shall be restored by the contractor, at his expense, to a neat and presentable condition appropriate to the surrounding landscape.

(c) The contractor shall give special attention to the effect of his operation upon the landscape, shall take special care to maintain natural surroundings undamaged and shall not deface, injure or destroy trees or shrubs nor remove or cut them without special authority. Where, in the opinion of the engineer, trees may be defaced, bruised, injured or otherwise damaged by the contractor's equipment, or by his blasting, dumping or other operations, he may direct the contractor to adequately protect such trees by placing boards, planks or poles around them. Monuments and works of art shall be similarly protected before beginning operations near them. All these precautions shall be taken by the contractor at his expense.

(d) Construction of drainage structures shall be scheduled so as to allow them to attain adequate strength before grading operations are carried on over or adjacent to them. All sodding, seeding or planting of any character required by the contract shall be performed in the proper season to insure the rooting and growth of the plants and grass.

#### § 242-84. Character of workmen and equipment

(a) The contractor shall at all times employ sufficient labor and equipment for executing the several classes of work to full completion in the manner and at the time specified in the specifications and contract.

(b) All workmen employed by the contractor must have sufficient skill and experience to properly perform the work assigned to them. All workmen engaged in special work, or skilled work, such as bituminous pavement or mixtures, concrete bases, pavements or structures, steel structures, or in any trade shall have sufficient experience in the performance of such work to properly and satisfactorily perform it, and to operate the equipment involved.

(c) Any person employed by the contractor, or by a subcontractor, who in the opinion of the engineer does not perform his work in a proper and skillful manner, or is disrespectful, intemperate, disorderly or otherwise objectionable, shall, at the written request of the engineer, be forthwith discharged by the contractor or subcontractor employing such employee, and such person shall not be employed again on any portion of the work without the written consent of the engineer. Should the contractor fail to remove such person or persons or fail to furnish suitable and sufficient equipment or personnel for the proper execution of the work, or should he display antagonism, disrespect or unwillingness to cooperate with the engineer, the Commissioner may withhold all estimates, which are or may become due, or may suspend the work until such orders are complied with and harmonious relations reestablished by the contractor with the engineer.

(d) All machinery or equipment owned or controlled by the contractor which is proposed to be used on the work, shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and to produce a satisfactory quality of work. The engineer may order the removal and require replacement of any unsatisfactory equipment. Should the contractor fail to furnish suitable and sufficient equipment for the proper execution of the work, the engineer may withhold all estimates which are or may become due, or may suspend the work until his orders are complied with. Failure of the contractor to provide adequate and satisfactory equipment may result in annulment of the contract. No change in the machinery and equipment employed on the job, which has the effect of decreasing its capacity, shall be made, except upon written permission from the engineer. The measure of capacity of machinery and equipment shall be its actual performance on the job. No item of equipment or machinery, after once being placed on the job, shall be removed without the consent of the engineer.

#### § 242-85. Temporary suspension of work

(a) The Commissioner shall have the authority to suspend the work, wholly or in part, for such a period as he may deem necessary, due to unsuitable weather, or to such other conditions as he may consider unfavorable for the suitable execution of the work. Notice of such suspensions, with the reasons therefor, shall be given the contractor in writing, before the work is stopped, and any extension of time involved shall be clearly set forth in this notice. Work of an emergency nature ordered by the engineer for the convenience of public traffic and the production of materials for storage, if performed during a period of total suspension, shall not be charged to contract time. The Commissioner may suspend the work, wholly or in part, for failure on the part of the contractor to correct conditions unsafe for workmen or the general public, or to carry out orders given or to perform any operations considered necessary for the satisfactory completion of the work, or to remove defective material from the work, and no change in contract time shall be allowed for these suspensions.

(b) The contractor shall not suspend the work without written authority from the Commissioner.

(c) Upon suspension, the work shall be put in proper and satisfactory condition, carefully covered, if required, and properly protected as directed by the engineer. In all cases of suspension, the work shall not again be resumed until permitted by written order of the engineer or the Commissioner. The contractor shall not make any claim or demand for damages by reason of temporary suspension of the work.

**§ 242-86. Determination and extension of contract time for completion**

(a) The contract time will be the number of calendar days allowed for completion of the work, as stated in the proposal and in the contract.

(b) Contract time shall commence on the date stipulated in the notice to proceed, and every calendar day thereafter shall be counted.

(c) The submission of a proposal carries with it the guaranty by the contractor that he will fully complete the work within the time specified.

(1) The time allowed for performance may be adjusted only for the reasons stated below:

(A) **Increased contract value.** If satisfactory fulfillment of the contract with authorized extensions and increases shall require the performance of work in greater quantities than those set forth in the proposal so that the total final payment is greater than the total original contract price, then the time allowance may be increased in the same ratio as the total cost of the work finally performed bears to the original total cost of the contract.

(B) **Suspension of work.** In case of total suspension ordered by the Commissioner not due to any fault of the contractor, the total number of calendar days during which the work is suspended shall be added to the contract time. In case of partial suspension ordered by the Commissioner not due to any fault of the contractor, the contract time may be extended to the extent of the effect that such suspension may bear on the duration of the contract as determined by the Commissioner.

(C) **Unforeseen causes.** In case of damages to the work due to unforeseen causes such as acts of God (force majeure) or by the public enemy, the Commissioner may make allowance of contract time for the time required to repair the damage, provided that at the time such repairs are made, the contractor is performing no work on the major items of the contract or that the work of the contract has not been wholly suspended. If the contractor is allowed to recover the expenses to repair the damage, the cost therefor shall not be considered in the total cost of the contract for the purposes of time extension.

(D) **Causes beyond the control of the contractor.** In case of delays or interruptions to the work caused by acts of the Government or other causes not attributable to the fault or negligence of the contractor, the Commissioner will evaluate the effect that such delay or interruptions have on the total contract time and he may allow an extension therefor.

(E) Other causes. Additional time will be allowed if at the time of executing a change order, extra work order or supplemental agreement, a time extension is agreed upon and so stipulated in the written order or agreement, in which case the added cost of such work will not be considered for time extension. If no time extension is stated, any added cost resulting therefrom will be considered for time extension.

(2) Changes in contract time shall not be considered or allowed for the following reasons;

(A) Rainfall, windstorms, floods and natural phenomena of normal intensity for the particular region.

(B) Suspensions of work ordered by the engineer due to the fault of the contractor.

(C) Unauthorized suspensions of work by the contractor.

§ 242-87. Failure to complete work on time

(a) Time is an essential element of the contract and it is important that the work be pressed vigorously to completion. Should the contractor fail to complete all the work within the time specified in the contract or as extended by written authorizations by the Commissioner based on the provisions of section 242-86 of this title, there shall be deducted from any monies due, or that may become due the contractor, the sum set forth in the following schedule for each and every calendar day the work remains uncompleted. This sum shall be considered and treated not as a penalty, but as fixed and agreed liquidated damages due the Government from the contractor by reason of inconvenience to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds, resulting from his failure to complete the work within the time specified in the contract.

Schedule of Liquidated Damages

Original Amount of Contract	Amount of Liquidated Damages per Day
Up to \$ 25,000	\$ 30
Over \$ 25,000 to 50,000	50
Over 50,000 to 100,000	75
Over 100,000 to 500,000	100
Over 500,000 to 1,000,000	150

Over 1,000,000 to 2,000,000	250
Over 2,000,000	250 plus \$50 for each additional million or fraction thereof.

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(b) Permitting the contractor to continue and finish the work or any part of it after the date of completion, or the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Government of any of its rights under the contract.

**§ 242-88. Abandonment of work or default of contract**

If the contractor fails to begin the work within the time specified, unless otherwise authorized; or fails to perform the work with sufficient workmen and equipment; or has insufficient materials to insure the completion within the contract time; or shall perform the work unsuitably; or shall neglect or refuse to remove materials or perform anew such work as may have been rejected as being defective or unsuitable; or shall abandon or discontinue the execution of the work without authority; or shall become insolvent or declared bankrupt; or shall commit any act of insolvency or bankruptcy or shall allow any final judgment in connection with the contract to stand against him unsatisfied by such period of time as stipulated in the decree of judgment; or shall make an unauthorized assignment for the benefit of any creditor or creditors; or for any cause whatsoever shall not carry on the work in an acceptable manner, the Commissioner may give notice in writing to the contractor and his surety of such delay, default or neglect, specifying the same and the action to be taken by the contractor and his surety; and if the contractor or surety, within a period of 10 days after such notice, shall not proceed satisfactorily in accordance therewith, then the Commissioner shall have full power and authority, without violating the contract, to take the execution of the work out of the hands of the contractor and to appropriate or use any or all materials and equipment on the ground or ordered for the work, as may be acceptable and suitable, and enter into any agreement for the completion of the contract according to the terms and provisions thereof, or use such other methods as in his opinion may be required for the completion of the contract in an acceptable manner. All costs and charges incurred by the Department or any damages that should be borne by the contractor, together with the costs of completing the work under the contract, shall be deducted from any money due or which may become due the contractor under this contract or any part thereof. In case the

costs, charges and damages paid by the Department shall be less than the amount which would have been payable under the contract if the same had been completed by the contractor, the contractor or his surety shall be entitled to receive the difference, and if the total of such costs, charges and damages exceeds the balance of the contract price which would have been payable to the contractor had he completed the work, then the contractor and surety shall, on demand, pay the Department the full amount of such excess. In determining the final cost, the time of completion by the Department, if the work is taken over, shall be used in determining the amount of liquidated damages to be deducted in case the work is not completed within the contract time as originally set or extended.

#### § 242-89. Termination of contractor's responsibility

The contract shall be considered complete when all work covered by the same shall have been completely performed on the part of the contractor, all parts of said work approved by the engineer, the final inspection made, the final liquidation examined and approved by the Commissioner, and the final payment made and accepted by the contractor. The date of final payment shall be the date of final completion and settlement and the contractor will then be released from further obligation except upon proof of error or as set forth in the performance and payment bonds.

### DIVISION 4. MEASUREMENT AND PAYMENT

#### § 242-101. Measurement of quantities

(a) The determination of quantities of work acceptably completed under the terms of the contract will be made by the engineer and based on measurements taken by him or his assistant according to Government measures, unless otherwise agreed upon in writing. Unless otherwise shown on the plans for the contract as awarded, all lengths and distances shall be measured horizontally. Measurements of depths or heights shall be made vertically. The volume of excavation and embankment will be computed by the method of average end areas, these areas being obtained by combining accurate cross sections of the original ground with actual cross sections of the completed work. Structures will be measured according to neat lines and shall not exceed those shown on the plans or by authorization. All materials which are specified for payment by "loose measurement" will be measured at the place where used on the contract unless otherwise provided. All materials which are specified for measurement in vehicles shall be hauled in approved vehicles and measured therein at the point of delivery on the construction. Vehicles for this purpose may be of any size or type satisfactory to the engineer, provided the recepta-

cle for the materials is of such type that the contents may be readily and accurately determined. Each approved vehicle shall bear an identification mark indicating specific approval by the engineer and also a permanent, plainly legible number. The engineer or inspector may reject all loads not hauled in such vehicles and may require each load to be struck off to a smooth surface or heaped to insure the delivery of the full quantity.

(b) When requested, the engineer shall furnish the contractor information necessary to enable him to check all quantities and if the contractor produces evidence that mistakes have been made, the quantities in question shall be rechecked by the engineer and contractor together, and corrections made where errors occur.

#### § 242-102. Scope of payment

(a) Payments to the contractor shall be made only for the actual quantities of contract items, authorized additions performed and accepted in accordance with the plans and specifications, and if upon completion of the construction these actual quantities shall show either a decrease or increase from the quantities in the proposal schedule, the contract unit prices will still prevail except as provided in sections 242-103 or 242-104 of this title. The quantities listed in the proposal schedule shall not govern final payment. The contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals necessary to the completion of the work and for performing all work contemplated and embraced under the contract; also for all loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties that may be encountered during the execution of the work and until its final acceptance by the engineer, and for all risks of every description connected with the execution of the work, also for all expenses incurred in consequence of the suspension of the work as herein authorized.

(b) In cases where the "Basis of Payment" clause in the specifications relating to any unit price in the proposal schedule requires that said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material shall not be measured or paid for under any other pay item which may appear elsewhere in the specifications.

(c) The payment of any partial estimate or of any retained percentage in no way shall affect the obligation of the contractor to renew or repair any defective parts of the construction or to replace any defective materials used in the construction, or to be responsible for all damage due to such defects.

**§ 242-103. Payment for increased or decreased quantities**

Whenever the quantity of any item of work as given in the proposal shall be increased or decreased, payment for such item of work shall be made on the basis of the actual quantity completed at the unit price for such item named in the proposal, except as otherwise provided in this title and in the detailed specifications for the item involved. Within the reasonable percentage limits (normal and expected) hereinbefore agreed upon in this title no allowance shall be made for any increased expense, loss or expected reimbursement, or loss of anticipated profits suffered or claimed by the contractor resulting, either directly from such alterations, or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the contractor and subsequent loss of expected reimbursement therefor, or from any other cause.

**§ 242-104. Extra work**

Work not covered by the items in the proposal and ordered by the engineer and covered by a supplemental agreement as provided in this title shall be paid for in accordance with the terms of the supplemental agreement. No claim for extra work will be allowed unless ordered in writing by the engineer prior to the initiation of any construction on the work involved and covered by the required supplemental agreement approved by the Commissioner.

**§ 242-105. Force account work**

(a) Force account work as required under this title shall be covered by written orders and supplemental agreements. Force account work shall be performed under the direct supervision of the engineer. The contractor and the engineer shall compare records of the work performed as ordered on a force account basis, at the end of each day in which such work is performed. Copies of these records shall be made upon suitable forms and signed by both the engineer and the contractor or his representative, one copy to be retained by each party.

(b) All work performed or labor and materials furnished on a force account basis shall be paid for as follows:

(1) For all labor and teams, and for foremen in direct charge of the specific operations, the contractor shall be paid the actual cost of wages as required by the contract in each case, or if not covered by the contract, then the current local rate of wages, and the actual cost of Workmen's Compensation Insurance, the whole to be agreed upon before starting work, plus an amount equal to 15% of the actual cost of wages and Workmen's Compensation Insurance plus the actual amount of social security taxes or any other employment taxes or fees required by law to which amount no percentage shall be added.

(2) For all materials furnished and accepted by the engineer, the contractor shall be paid the actual cost of such materials as are used on the force account work, including transportation charges, to which costs shall be added a sum equal to 15% thereof.

(3) For any machine-powered tools, special or heavy equipment required and approved by the engineer, the contractor shall be paid reasonable rental at rates which shall be agreed upon in writing by the Commissioner, which rates shall include compensation for all fuel, lubricants and all other expenses necessary for their operation, and to which no percentage shall be added. No allowance shall be made for the use of small tools and manual equipment.

(4) No allowance shall be made for general superintendence.

(c) The Contractor shall furnish itemized weekly statements to the resident engineer of the cost of all force account work, together with the original receipted bills for material used or any other expenses in connection with the force account work. These weekly statements shall show the following information:

(1) Nature of work performed;

(2) Name, class, dates, number of hours worked each day, total hours, rate and extension, for each laborer, foreman and team engaged. (Teams and drivers must be carried separately in the statement, and, likewise, must all operators of equipment be carried separately in order that the amount paid for labor may be determined);

(3) Designation, number of hours worked each day, total hours, rental rate and extension for each truck, and unit of equipment or machinery engaged;

(4) Detailed statement of quantities of materials used and itemized costs and extension; and

(5) Freight and transportation charges on materials.

(d) On completion of the force account work, the contractor shall file a detailed claim for all work done, including necessary supporting receipts and documents not previously furnished the engineer, and this shall be subject to review and approval of the Commissioner before payment. Such claim shall be filed not later than the 10th day of the month following that in which the work was actually performed.

#### § 242-106. Omitted items

The Commissioner shall have the right to cancel the portions of the contract relating to the construction of any item therein when the work is found to be not necessary for the completion of the construction in a manner satisfactory to the Department. For minor items no adjustment shall be required. For major items the contractor will be allowed any costs incurred based on certified statements and receipted bills, up to the time of cancellation, in the same manner as for forced account work.

§ 242-107. Partial payments

(a) Partial payments based on estimates made by the engineer will be made monthly or oftener, as deemed expedient by the Department. The amount of the partial payment shall be 90% of the amount determined from the engineer's estimate to be due, less any deductions authorized by the specifications. No such payments shall be made when, in the judgment of the engineer the work has not proceeded according to the terms of the contract and no partial payments shall be construed as an acceptance by the Department of any material furnished or work done. The 10% deducted from the partial payments will be retained by the Department until the final acceptance of all the work covered by the contract.

(b) If the engineer so provides, advance payment may be made to the contractor for materials which are to be incorporated into the work and which are on hand at the job site; Provided, however, That the amount of said advance payment shall not exceed 75% of the cost of such materials. In the case of materials which have been purchased by the contractor, the cost shall be determined by the vendor's invoice. In the case of materials manufactured or obtained by the contractor through the use of his own workmen or equipment, the cost shall be determined by the engineer in accordance with and based upon that particular unit of the project in which the materials are to be utilized.

(c) The contractor shall present signed receipts or other documentary evidence to prove that the cost of the materials for which he is to receive advance payment has been paid in full. If at any time after the contractor has received advance payment for materials on hand at the job site, the engineer shall obtain evidence indicating that said materials, or any part or parts thereof, are defective, or that said material, or part or parts thereof, do not conform to the specifications outlined in the special provisions, the Commissioner shall proceed to deduct from any of the succeeding partial payments due the contractor for work actually performed a sum sufficient to cover the cost of the materials, or part or parts thereof, found to be defective.

(d) Materials for which the contractor has received advance payment shall be properly housed or stored at the job site in a manner which will insure the preservation of their quality and fitness for the work. Moreover, the contractor shall not withdraw said materials for any purpose other than incorporation into the project, unless he has written authority from the Commissioner to do so.

(e) The contractor agrees that the payment of any monthly estimate does not constitute final acceptance of any part of the work. Monthly payments shall be considered as approximate only. Should a reasonable doubt arise during construction as to the adequacy of any part of the work completed to that date, the payment for that portion shall not be allowed until the cause for such doubt has been removed.

(f) The Commissioner shall have the right to refuse to make any partial payment for materials delivered, until they are incorporated in the work. Payment will not be made for materials on hand amounting to less than \$1,000 in total cost, as determined in the manner outlined herein.

#### § 242-108. Acceptance and final payment

When the final inspection has been made by the engineer appointed for that purpose and the final liquidation has been recommended to the Commissioner, as provided in this title, and the final liquidation has been examined and approved by the Commissioner as required by the laws of the Virgin Islands, the contract shall be deemed completed and the work accepted and final payment shall be made to the contractor. Final payment will not be made until the contractor shall file with the Commissioner the consent of the surety to payment of the final estimate and satisfactory evidence by affidavit or as otherwise required by the Department that all his indebtedness by reason of the contract has been fully paid or satisfactorily secured. Payment of wages to laborers and employees of the contractor for their work shall have preference over the payment of other debts of the contractor, except those established by law. The acceptance of this final payment by the contractor shall operate as and shall be a release to the Government from all claims or liabilities under this contract for anything done or furnished or relating to the work under this contract or for any act or neglect of said Government or its agents relating to or connected with the contract.

Chapter 25;  
Subchapter 281 Acquisition and Disposition of Surplus Property

Statutory Authority: 31 V.I.C. §281

Effective Date: September 24, 1958 (File No. 44)

§ 281-1. Excess or surplus property. All surplus items directed to the Government Secretary's office should be forwarded to the Division with the request that they be classified and said Government Secretary's office be advised, in writing, by the Division, as to what items are needed by the Government of the Virgin Islands.

When such information is made available to the Government Secretary's office, said office will communicate with the appropriate department requesting that the items selected by the Government of the Virgin Islands be made available. The resulting purchase order should be forwarded to the appropriate department, which shall be to ascertain that the items requested, when received, are made available to the appropriate department and agency.

When large shipments of surplus materials are received, distribution will be made under direct supervision of the Division.

§ 281-2. Sale of excess, used or obsolete property. Whenever it becomes necessary for a department or agency to report excess used property or supplies, the following procedure shall apply:

The department or agency shall accomplish a Request for Survey Form. When this form is executed it should be forwarded to the Division for its recommendation. If, in the opinion of the Division, the equipment can be satisfactorily used in another department or agency, said division will cause to be prepared, in triplicate, Form of Transfer of Property. The equipment will be turned over to the department or agency to whom it is transferred, without cost. Thereafter, the supplier or equipment so transferred shall appear on the inventory of the department or agency to whom transferred.

However, if the Division can find no suitable use for the surplus or equipment, said division shall appoint a survey board or officer, charging said board or officer with the responsibility of making one of two recommendations to the Division of Procurement and Supply as indicated below on a survey report form:

- (1) That the equipment or supplies be destroyed;
- (2) That the equipment or supplies be sold to the highest bidder.

or must be

## Chapter 25. Surplus Property

### Subchapter 281. Acquisition and Disposition of Surplus Property

#### § 281-1. Excess equipment distribution; surplus material

All surplus lists directed to the Government Secretary's office should be forwarded to the Division with the request that they be circulated and said Government Secretary's office be advised, in writing, by the Division, as to what items are needed by the Government of the Virgin Islands.

When such information is made available to the Government Secretary's office, said office will communicate with the appropriate department requesting that the items selected by the Government of the Virgin Islands be made available. The resulting purchase order should be forwarded to the Division, whose duty shall be to ascertain that the items requisitioned, when received, are made available to the appropriate department and agency.

When large shipments of surplus materials are received, distribution will be made under direct supervision of the Division.

#### § 281-2. Sale of excess, used or obsolete property

Whenever it becomes necessary for a department or agency to report excess used property or supplies, the following procedure shall apply:

The department or agency shall accomplish a Request for Survey Form. When this form is executed it should be forwarded to the Division for its recommendation. If, in the opinion of the Division, the equipment can be satisfactorily used in another department or agency, said division will cause to be prepared, in triplicate, Form of Transfer of Property. The equipment will be turned over to the department or agency to whom it is transferred, without cost. Thereafter, the supplies or equipment so transferred shall appear on the inventory of the department or agency to whom transferred.

However, if the Division can find no suitable use for the supplies or equipment, said division shall appoint a survey board or officer, charging said board or officer with the responsibility of making one of two recommendations to the Division of Procurement and Supply, as indicated below on a survey report form:

- (1) That the equipment or supplies be destroyed;
- (2) That the equipment or supplies be sold to the highest bidder.

The recommendations of the survey board or officer must be made to the Division on a survey report form.

Upon receipt of a survey board's recommendation, the division, if in agreement, shall carry out the instructions of the board or officer as promptly as possible.

If a sale is to be made, Standard Form 114—Sale of Government Property Invitation, Bid, and Acceptance—must be prepared and a written bid issued. All sales contracts shall be advertised and all bids received must be accomplished by a bid guarantee in an amount to be decided by the Division. In cases where the amount to be derived from a sale is not expected to exceed \$10.00 such sales may be negotiated by the Division.

When an award is deemed necessary, the Division shall prepare an abstract indicating all quotations received. Thereafter the successful bidder, upon receipt of the award, is required to pay said amount of his bid to the Division. The amount received must thereafter be deposited with the Finance Department.