

Case 75-72 - Contract Format for Dismantling, Demolition or Removal of Improvements (16-404.2). Copies of the Army Policy Member's memorandum of 15 April 1975 were distributed to the Members. Attached to the memorandum are proposed editorial changes to Section XVI and additional clauses proposed for inclusion in dismantling, demolition or removal of improvements contracts. The Committee APPROVED the editorial changes to pages 16:27 and 16:28 FOR PRINT, with a change to Item 6 noted by those present. The balance of the changes concerning the additional clauses were referred to the Construction Subcommittee for review and recommendation. The Subcommittee is to submit its report by 9 June 1975.

Members of the Subcommittee are:

Army	- Gary W. Hudiburn, DAENGC-U, Chairman
Navy	- Robert J. Robertory, NAVFAC
Air Force	- Emmert Roalkvam, AF/LGPIA
DSA	- French W. Holt, DCAS-HR
OSD	- Sam Gorelick, OASD (I&L) (Consultant)
	Cdr Jon Ives, OASD (I&L) (Consultant)

(16 April 1975)

Case 75-72 - Contract Format for Dismantling, Demolition or Removal of Improvements (16-404.2). Copies of the Subcommittee report of 20 February 1976, received 16 March 1976, were distributed to the Members. Attached to the report are proposed changes to 16-404 intended to update and clarify the clauses for dismantling, demolition and removal of improvements contracts. The Committee agreed to consider the report at the meetings of 7/8 April 1976.

(17 March 1976)

2. Case 75-72 - Contract Format for Dismantling, Demolition or Removal of Improvements (16-404.2).

Visitors - Mr. Gary W. Hudiburn; Miss Adeline A. Mueller, DAENGC-U

The Committee considered the Subcommittee report of 20 February 1976. The application of the Davis Bacon Act and the Miller Act to dismantling, demolition or removal of improvements contracts was considered. Tab A to the Subcommittee report was reviewed on a page-by-page basis with changes made at the table to pages 16:25 and 16:25-A being noted by those present. The Army Policy Member questioned the need for conformance of the material considered under this case to the concept adopted by the Committee under Case 71-122 with regard to incorporation by reference. It was suggested that the clauses cited in the contract format in 16-404.2 be deleted and set up as a new Part to Section VII. The Army Policy Member will develop material that can be provided to the Publications Editor to accomplish this concept. The material in the Subcommittee report as revised at the table was APPROVED FOR PRINT.

CASE CLOSED
(8 April 1976)

Case 75-72 - Contract Format for Dismantling, Demolition or Removal of Improvements (16-404.2). A clean draft of the material approved under this case was provided to the Members for information. The material is being provided direct to the Publications Editor for print.

CASE RE-CLOSED
(19 May 1976)

1. Case 75-72 - Contract Format for Dismantling, Demolition or Removal of Improvements (16-404.2). The Army Policy Member distributed copies of an internal Army memorandum of 9 December 1976 containing proposed changes to 7-2003.75. The changes are considered to be editorial in nature and were therefore APPROVED FOR PRINT.

CASE RE-CLOSED
(12 January 1977)



75-72 140 1/12

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:

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*Consider for print
subject to
reclaim.*

9 December 1976

SUBJECT: Bid Guarantees for Contracts for Dismantling, Demolition or Removal of Improvements

Assistant Secretary of the Army (I&L)
ATTN: Mr. Carl Brotman
Army Policy Member, ASPR Comm.
Deputy for Materiel Acquisition
Washington, D. C. 20310

1. Reference Defense Procurement Circular 76-5 dated 15 October 1976 which contained revised coverage for contracts for dismantling, demolition or removal of improvements.

2. Under ASPR Case 75-72 the Construction Subcommittee recommended inclusion in ASPR 7-2003.73 of a new solicitation provision "Bonds or Other Security" in accordance with ASPR 4-503. The first sentence of the solicitation provision states:

"A bid bond (Standard Form 24) in the penal sum of \$ _____ must accompany the bid."

The requirement for submission of only a bid bond is inconsistent with the "Bid Guarantee" solicitation provision in ASPR 7-2003.25, which also is for inclusion in this type of contract in accordance with ASPR 4-503. The "Bid Guarantee" provision permits a bid guarantee in the form of bid bond, postal money order, certified check, cashier's check, etc.

3. We recommend that this inadvertent inconsistency be removed by making an editorial change to the first sentence of the solicitation provision in ASPR 7-2003.75 as follows:

"A-bid-bond-(Standard-Form-24) [A bid guarantee] in the penal sum of \$ _____ must accompany the bid."

Gary W. Hurburgh
GARY W. HURBURGH - OCE - Army
Chairman, Construction Subcommittee



75-72

NO 19 MAY 76
To editor for action

ROUTING AND TRANSMITTAL SLIP		ACTION	
1 TO Mr. Roy L. Schooling OASA(I&L) Room 3E-573, Pentagon	INITIALS	CIRCULATE	
	DATE	COORDINATION	
2	INITIALS	FILE	
	DATE	INFORMATION	
3	INITIALS	NOTE AND RETURN	
	DATE	PER CON - VERSATION	
4	INITIALS	SEE ME	
	DATE	SIGNATURE	
REMARKS			
SUBJECT: ASPR Case 75-72 -- Dismantling-Demolition			
1. In accordance with your informal request of several weeks ago, inclosed is a realignment of the coverage for contracts for dismantling, demolition or removal of improvements submitted in Construction Subcommittee report of 20 Feb 76 under ASPR Case 75-72.			
2. Attached comments regarding the realignment of the coverage summarize the principal changes made in the coverage submitted in the 20 Feb 76 report.			
3. A cross-reference list is attached as TAB A to assist the ASPR Committee in its review of the revised coverage in Tabs B, C, D and E.			
Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions			
FROM		DATE	
GARY W. HUDIBURGH - OCE		6 May 76	
Chairman, Construction Subcommittee		PHONE	
<i>Gary W. Hudiburgh</i>			

Comments Regarding Realignment of Coverage
Under ASPR Case 75-72

GENERAL: Coverage presently in 16-404 has been relocated as follows:

- (i) format in 16-502 under special contract formats and forms since it does not appear proper for inclusion under construction and architect-engineer coverage;
- (ii) policy in Part 5, Section IV under special types and methods of procurement rather than in 18-116 for the same reason; and
- (iii) clauses in new Part 21, Section VII.

LABOR:

All of the coverage regarding applicability of Service Contract Act and Davis-Bacon Act in the report of 20 Feb 76 has been retained in 4-502 because of the coverage in 29 CFR 4.116(b)(1) and ASPR 12-1003(iii). However, the words "such contracts" at the end of 4-502 possibly could be clarified.

29 CFR 4.104 states that under Section 4 of the Service Contract Act the Secretary of Labor is authorized and directed to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from the provisions of the Act. 29 CFR 4.116(b)(1) provides: ". . . For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act may be considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract will be subject to the Act in accordance with its general coverage provisions."

BONDS:

In 4-503 we have retained reference to "performance bond or other security", included reference to "Bid Guarantee" provision in 7-2003.25 and included a new solicitation provision for "Bonds or Other Security" in 7-2003.XX. In this connection, we have revised the "Protection of Existing Vegetation, Structures, Utilities and Improvements" clause in 7-2101.13 to require contractor to also protect from damage adjacent property of a third party, in order that a performance bond or other security may be required for that purpose.

In 7-2101.2 the "Statement of Work" clause has been revised by providing that paragraph (d) regarding furnishing of performance bond or other security is to be added where such security will be required of the contractor.

ASPR 16-404.2 in the 20 Feb 76 report had required inclusion of the "Additional Bond Security" clause in 7-602.17. Since payment bonds are not required in dismantling and demolition contracts, the language at the end of the clause referring to persons supplying labor and materials has been deleted from 7-2102.3. The clause title also has been changed to "Additional Bond or Other Security". Introductory language has been added providing for inclusion of the clause if the contract will require the contractor to furnish a performance bond or other security.

PAYMENTS:

ASPR 4-504 has been revised to refer to two payments clauses rather than Alternates 1 and 2 and other minor editorial changes have been made to accommodate this change. Alternates 1 and 2 have been set out as separate payment clauses in 7-2101.3(a) and (b).

FORMAT:

Sentence has been included in 16-502 requiring performance in accordance with designated general provisions, specifications, drawings and conditions. An "Alterations" clause has been added to the format to obviate the need for coverage as a "when applicable" clause in 7-2102.

CROSS-REFERENCE LIST

<u>Case 75-72</u> <u>Report 20 Feb 76</u>	<u>New Location</u>	<u>Case 75-72</u> <u>Report 20 Feb 76</u>	<u>New Location</u>
16-404.1(a)	4-502	16-404.2 (cont'd)	
(b)	4-504(a)	GP-19	7-2101.32
(c)	4-504(b)	20	7-2102.2
(d)	4-503	21	7-2102.17
(e)	4-501	22	7-2101.28
		23	7-2101.27
16-404.2 (format)	16-502	24	7-2101.16
GP-1	7-2101.2	25	7-2101.12
2	7-2101.3	26	7-2101.13
3	7-2101.4	27	7-2101.20
4	7-2101.5	28	7-2101.21
5	7-2101.6	29	7-2101.22
6	7-2101.7	30	7-2102.4
7	7-2101.8	31	7-2102.5
8	7-2101.9	32	7-2102.6
9	7-2101.10	33	7-2102.7
10	7-2101.17	34	7-2102.8
11	7-2101.19	35	7-2101.23
12	7-2101.18	36	7-2101.24
13	7-2101.14	37	7-2102.9
14	7-2101.11	38	7-2101.1
15	7-2101.15	39	7-2101.25
16	7-2102.16	40	7-2102.1
17	7-2102.3	41	7-2102.10
18	7-2101.31	42	7-2101.26

Case 75-72

Report 20 Feb 76

New Location

16-404.2 (cont'd)

GP-43	7-2101.29
44	7-2101.30
45	7-2102.21
46	7-2102.15
47	7-2101.33
48	7-2102.11
49	7-2102.12
50	7-2102.13
51	7-2102.14
52	7-2102.18
53	7-2102.19
54	7-2102.20
55	7-2102.22
56	16-502

Part 5 - Dismantling, Demolition or Removal of Improvements

4-500 Scope. Procurement procedures of special application to contracts for dismantling, demolition or removal of improvements are set forth in this Part.

4-501 General. A copy of the proposed contract for dismantling, demolition or removal of improvements consisting of the contract format in 16-502 and the applicable clauses in 7-2101 and 7-2102 shall be furnished to bidders with the invitations for bids.

4-502 Labor Provisions. The provisions of the Davis-Bacon Act relating to the predetermination of minimum wages for mechanics and laborers do not apply to contracts solely for dismantling, demolition or removal of improvements. The Service Contract Act is applicable to such contracts provided further work is not contemplated which will result in construction of a public building or public works at that location. If such further construction work, even though by separate contract, is intended, then the Davis-Bacon Act must be made applicable to such contracts.

4-503 Bonds or Other Security. The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids.

If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "Bid Guarantee" provision in 7-2003:25 and the "Bonds or Other Security" provision in 7-2003.XX shall be included in the invitation for bids.

4-504 Payment.

(a) the contract may provide for payment by the Government to the contractor for the dismantling or demolition of structures and conditioning of materials (see 7-2101.3(a)), or it may provide for payment of compensation by the contractor to the Government in consideration of the right to salvage and remove for his own use the materials resulting from the dismantling or demolition operation (see 7-2101.3(b)). The contracting officer should carefully consider the usefulness of salvageable property to the Government. Any items more useful to the Government than the value to the contractor as salvage should be expressly designated for retention by the Government. Title to any property not specifically designated for retention by the Government will vest in the contractor. The contracting officer shall determine the fair market value of the property title to which is to be vested in the contractor, since the value thereof will have a direct bearing upon the amount of money consideration, if any, that may be payable to the contractor and in determining whether further compensation may be made in the event of termination for convenience or for default.

(b) In special circumstances where it will be advantageous to the Government, the payment provision in 7-2101.3(b) may be modified to provide for

payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

4-505 Termination. The termination for default and termination for convenience clauses in 7-2101.7 and 7-2101.8 provide specifically that title to property which under the terms of the contract is vested in the contractor is revested in the Government in the event of termination, except as to such property as the contractor has disposed of by bona fide sale or property which has been removed from the site by the contractor.

Part 21 - Dismantling, Demolition or Removal of Improvements

7-2100 Scope of Part. This Part sets forth uniform contract clauses for use in connection with contracts for dismantling, demolition or removal of improvements (see Part 5, Section IV, and 16-502).

7-2101 Required Clauses. The following clauses shall be inserted in all contracts for dismantling, demolition or removal of improvements.

7-2101.1 Definitions. Insert the clause in 7-602.1.

7-2101.2 Statement of Work.

STATEMENT OF WORK (1976)

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of _____ (identify property) _____.

(b) The work shall be commenced _____ and shall be completed not later than _____.

(c) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

In accordance with 4-503 where the contractor is required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property (see 7-2101.13) during the performance of the contract, the following paragraph (d) shall be added to the above clause:

(d) A performance bond or other security in the penal sum of _____ dollars (\$ _____) shall be furnished by the Contractor.

7-2101.3 Payments.

(a) In accordance with 4-504 insert the following clause in contracts providing for payment by the Government to the contractor. However, if it is determined that all the material resulting from the dismantling or demolition work is to be retained by the Government and the contractor is to be entirely compensated by payments received under the contract, paragraph (b) of the clause shall be deleted.

PAYMENT BY GOVERNMENT TO CONTRACTOR ~~(JAN-1965)~~ (1976)

(a) In (full) (part) (delete one) consideration of the performance of the work called for in the Statement of Work, the Government will pay to the Contractor.....(words).....(figures)..... Unless otherwise provided in the specifications, progress payments will be made monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. In making such progress payments there shall be retained 10 per cent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, ~~at any time after 50 per cent of the work has been completed~~ finds that satisfactory progress ~~is being made, he may authorize any of the remaining progress payments to be made in full~~ [was achieved during any period

for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for the protection of the Government and, at his discretion, may release to the Contractor

all or a portion of any excess amount.] Furthermore, on completion and acceptance of each separate unit or other division of the contract on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

[dismantled
or]

•(b) In further consideration of the faithful performance hereof, the Contractor shall receive title to all property to be demolished which is not specifically designated as being retained by the Government, said title to vest in the Contractor immediately upon the Contractor's receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

*Delete, if inapplicable.

(c) Upon completion and acceptance of all work required hereunder, final payment of the amount due the Contractor under this contract will be made upon the presentation of a properly executed and duly certified voucher therefor, and in addition, if requested, a release of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

(End of clause)

(b) In accordance with 4-504 insert the following clause in contracts providing for payment of compensation by the contractor to the Government in consideration of the right to salvage and remove for his own use the materials resulting from the dismantling or demolition operation. In special circumstances where it will be advantageous to the Government, the clause may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

PAYMENT BY CONTRACTOR TO GOVERNMENT ~~(JAN-1965)~~ (1976)

[to be dismantled or demolished]

(a) The Contractor shall receive title to all property covered by this contract not specifically designated in the specifications as being retained by the Government, said title to vest in the Contractor immediately upon receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. All property acquired by the Contractor hereunder shall be removed from the site by the Contractor promptly, as the storage of such property on the site will not be permitted beyond the completion date hereof. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

[the "Statement of Work" clause of this contract]

[dismantling or]

(b) The Contractor shall perform the work called for in Clause 1 and, unless otherwise provided in the specifications, within days of the receipt of notice of award and before proceeding with demolition, shall pay.....(words).....(figures)..... Checks shall be made payable to the Treasurer of the United States and shall be forwarded to the Contracting Officer.

(End of clause)

- 7-2101.4 Specifications and Drawings. Insert the clause in 7-602.2.
- 7-2101.5 Changes. Insert the clause in 7-602.3.
- 7-2101.6 Differing Site Conditions. Insert the clause in 7-602.4.
- 7-2101.7 Termination for Default--Damages for Delay--Time Extensions.

TERMINATION FOR DEFAULT--DAMAGES FOR DELAY--TIME EXTENSIONS ~~(1965)~~
~~1967~~ (1976)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. [In addition, if title to property is vested

in the Contractor under this contract it shall revert in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor.] Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

(End of clause)

During a period of national emergency, paragraph (d) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather", after the word "causes" wherever it appears. When Standard Form 23A is used, the words "Disputes clause of this contract" in the above clause need not be substituted for "Clause 6 of these General Provisions".

7-2101.8 Termination for Convenience of the Government.

(a) Insert the following clause in contracts exceeding \$10,000 in value. In accordance with E-621, the last sentence of paragraph (j) of the clause may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, [or] state or local governments or agencies thereof. ~~or-nonprofit-contracts-with-nonprofit educational-or-research-institutions-~~

~~TERMINATION FOR CONVENIENCE OF THE GOVERNMENT-CONSTRUCTION (1974 -~~
~~APR) - (1976)~~

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. [Upon receipt by the Contractor of the notice of termination, if title to property is vested in the Contractor under this contract, it shall revert in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor.]

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

- (vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;
- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (c) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

- (i) with respect to all contract work performed prior to the duplication of any items)

of—

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

- (A) the cost of such work;
- (B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (h)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and
- (C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (ii) the reasonable cost of the preservation and protection of property incurred pursuant to paragraph (h)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (h)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c), (e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor

~~7-602.29~~

ARMED SERVICES PROCUREMENT REGULATION

to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

(b) Insert the following clause in contracts not exceeding \$10,000:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT ~~(1965-JAN)~~ (1976)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is so terminated, the rights, duties and obligations of the parties hereto shall be in accordance with the applicable Sections of the Armed Services Procurement Regulation in effect on the date of this contract. [In addition, upon receipt by the Contractor of the notice of termination, if title to property is vested in the Contractor under this contract, it shall revert in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor.]

(End of clause)

- 7-2101.9 Disputes. Insert the appropriate clause in 7-602.6.
- 7-2101.10 Assignment of Claims. Insert the clause in 7-602.8.
- 7-2101.11 Conditions Affecting the Work. Insert the clause in 7-602.14.
- 7-2101.12 Site Investigation. Insert the clause in 7-602.33.
- 7-2101.13 Protection of Existing Vegetation, Structures, Utilities, and Improvements.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS (1968 JAN 1976)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

(End of clause)

7-2101.14 Permits and Responsibilities.

PERMITS AND RESPONSIBILITIES (1976)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others.

(End of clause)

7-2101.15 Other Contracts. Insert the clause in 7-602.15.

7-2101.16 Liability for Government Retained Property.

LIABILITY FOR GOVERNMENT RETAINED PROPERTY (~~1965-JAN~~) (1976)

As to [(i)] items of property, title to which remains in the Government and which are to be delivered to the Government by the Contractor in the performance of the work, [and (ii) items of property, title to which is vested in the Contractor but which under the termination clauses of this contract is revested in the Government upon notice of termination,] the Contractor assumes the risk of and shall be responsible for any loss thereof or damage thereto except for reasonable wear and tear incident to removal and delivery to the Government.

(End of Clause)

7-2101.17 Workmanship.

WORKMANSHIP (~~JAN-1965~~) (1965 JAN)

All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless or otherwise objectionable.

(End of clause)

7-2101.18 Superintendence by Contractor. Insert the clause in 7-602.12.

7-2101.19 Inspection and Acceptance. ~~(insert the clause in~~
~~7-602-11-)-~~

[INSPECTION (1976)

(a) All workmanship (if not otherwise designated by the specifications) shall be subject to inspection and examination by Government inspectors at any and all times during dismantling or demolition and at any and all places where such dismantling or demolition are carried on. The Contractor shall be responsible for any damage to property caused by unworkmanlike performance or by defective workmanship. Any unsatisfactory facilities, materials, and equipment, used by the Contractor, shall be replaced with satisfactory facilities, materials, and equipment, and the Contractor shall promptly segregate and remove such unsatisfactory items from the premises. If the Contractor fails to proceed at once in a workmanlike manner with the performance of the work or with the correction of defective workmanship, the Government may by contract or otherwise, replace such facilities, materials, and equipment or correct such workmanship and charge the cost thereof to the Contractor, and may terminate the right of the Contractor to proceed as provided in the "Termination for Default--Damages for Delay--Time Extensions" clause of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said clause for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials

necessary for the safe and convenient inspection by Government inspectors. All inspection by the Government shall be performed in such manner as not unnecessarily to delay the work.

(End of clause)

7-2101.20 Operations and Storage Areas. Insert the clause in 7-602.35.

7-2101.21 Cleaning Up. ~~{Insert-the-clause-in-7-602-40-}~~

CLEANING UP (1976)

The contractor shall at all times keep the dismantling or demolition area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove from the premises any rubbish and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the dismantling or demolition the Contractor shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

(End of clause)

7-2101.22 Accident Prevention. Insert the clause in 7-602.42(a). In contracts involving work of long duration or of hazardous character, add the paragraph (e) in 7-602.42(b).

7-2101.23 Composition of Contractor. Insert the clause in 7-602.32.

7-2101.24 Renegotiation. In accordance with 7-103.13, insert the appropriate clause therein.

7-2101.25 Liquidated Damages. Insert the clause in 7-603.39. The rate of liquidated damages will be determined in accordance with 18-113.

- 7-2101.26 Pricing of Adjustments. Insert the clause in 7-103.26
- 7-2101.27 Federal, State and Local Taxes. Insert the clause in 7-103.10(a).
- 7-2101.28 Equal Opportunity. In accordance with 7-103.18(a) insert the clause therein.
- 7-2101.29 Listing of Employment Openings. Insert the clause in 7-103.27.
- 7-2101.30 Employment of the Handicapped. In accordance with 12-1302(a). insert the clause in 7-103.28.
- 7-2101.31 Covenant Against Contingent Fees. Insert the clause in 7-103.20.
- 7-2101.32 Officials Not to Benefit. Insert the clause in 7-103.19.
- 7-2101.33 Value Engineering Incentive. Insert the clause in 7-602.50.

7-2102 Clauses To Be Used When Applicable In Contracts for Dismantling,
Demolition or Removal of Improvements.

7-2102.1 Service Contract Act of 1965. In accordance with 4-502 and Part 10, Section XII, insert the appropriate clause in 7-1903.41(a) or (b).

7-2102.2 Contract Work Hours and Safety Standards Act--Overtime Compensation. In accordance with 12-301 and 12-302 insert the clause in 7-103.16(a).

7-2102.3 Additional Bond or Other Security. If the contract will require the contractor to furnish a performance bond or other security (see 4-503 and 7-2101.2), insert the following clause:

ADDITIONAL BOND OR OTHER SECURITY (1976)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government.

(End of clause)

7-2102.4 Availability of Utility Services. Insert the following clause in contracts for performance at Government installations when it is determined that one or more utility systems and supplies are adequate for the needs and use of both the Government and the contractor and it is advantageous to the Government to furnish such utility services:

AVAILABILITY AND USE OF UTILITY SERVICES ~~4-1067-APR~~ (1976)

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications. Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer.

(b) The Contractor shall carefully conserve utilities furnished without charge. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the ~~construction~~ [dismantling or demolition.]

(End of clause)

7-2102.5 Misplaced Material. If the contract involves work on or adjacent to a navigable stream, insert the clause in 7-603.32.

7-2102.6 Signal Lights. If the contract involves the use of marine equipment, insert the clause in 7-603.33.

7-2102.7 Military Security. In accordance with 7-104.12, insert the clause set forth therein in contracts involving classified facilities except in those contracts to be performed outside the United States, its possessions and Puerto Rico.

7-2102.8 Identification of Employees. In accordance with 7-603.34, insert the clause set forth therein where identification is required for security or other reasons.

7-2102.9 Interest. In accordance with E-620, insert the clause in 7-104.39.

7-2102.10 Examination of Records by Comptroller General. In accordance with 7-104.15, insert the clause therein negotiated contracts in excess of \$10,000.

7-2102.11 Utilization of Small Business Concerns. In accordance with 1-707.3(a), insert the clause in 7-104.14(a).

7-2102.12 Small Business Subcontracting Program. In contracts which may exceed \$500,000 and which contain the clause in 7-104.14(a), insert the following clause:

~~SMALL BUSINESS SUBCONTRACTING PROGRAM - MAINTENANCE, REPAIR AND CON-~~
~~STRUCTION (1967 HSH) (1976)~~

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Notwithstanding the instructions on DD Form 1140-1, prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a one-time completed DD Form 1140-1 to the Government addressees prescribed thereon. The DD Form 1140-1 shall show the prime contract number in lieu of identifying a quarterly report period. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding \$500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1.

(End of clause)

7-2102.13 Utilization of Minority Business Enterprises. In accordance with 1-332.2, insert the clause in 7-104.36(a).

7-2102.14 Minority Business Enterprises Subcontracting Program. In accordance with 1-332.2, insert the clause in 7-104.36(b).

7-2102.15 Payment of Interest on Contractors' Claims. In accordance with 1-333, insert the clause in 7-104.82.

7-2102.16 Gratuities. In accordance with 7-104.16 insert the clause therein.

7-2102.17 Convict Labor. In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-2102.18 Price Reduction for Defective Cost or Pricing Data. In accordance with 7-104.29, insert the appropriate clause therein.

7-2102.19 Audit by Department of Defense. In accordance with 7-104.41,
insert the clause therein.

7-2102.20 Subcontractor Cost or Pricing Data. In accordance with
7-104.42, insert the appropriate clause therein.

7-2102.21 Clean Air and Water. In accordance with 1-2302.2, insert
the clause in 7-103.29.

7-2102.22 Privacy Act. In accordance with 1-327.1, insert the clause
in 7-104.96.

16-502 Format for Contract for Dismantling, Demolition or Removal of Improvements. In accordance with 4-501, the format below, together with the applicable clauses in 7-2101 and 7-2102, shall be used for contracts for dismantling, demolition or removal of improvements:

Contract No. _____

CONTRACT FOR DISMANTLING,
DEMOLITION OR REMOVAL OF IMPROVEMENTS
DEPARTMENT OF _____

CONTRACTOR AND ADDRESS:

CONTRACT FOR:

LOCATION:

*PAYMENT will be made to

*PAYMENT will be made by

Appropriation Data

*Delete inapplicable phrase.

THIS CONTRACT [is] entered into this _____ day of _____, 19____, by the United States of America (hereinafter called the Government), and
*a Joint Venture consisting of _____
* _____, a corporation organized and existing under the laws of the State of _____
*a partnership consisting of _____
*an individual trading as _____ of the city of _____ in the State of _____ (hereinafter called the Contractor). [The parties hereto do mutually agree to perform this contract in strict accordance with _____ (number of pages) General Provisions, and the following designated specifications, drawings and conditions:]

Alterations. The following alterations were made in this contract before it was signed by the parties hereto:

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
(Contracting Officer)

(Contractor)
By _____
(Title)

*Delete all lines which do not apply.

MISCELLANEOUS CHANGES

1. In addition to the changes to page 7:271 under ASPR Case 75-120, the following change should be made in 7-600:

7-600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18-100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both. ~~For-format-and clauses-to-be-used-in-a-contract-for-dismantling,-demolition-or-removal of-improvements,-see-16-404-~~

2. The following solicitation provision should be added to Part 20 of Section VII:

7-2003. XX Solicitation Provision for Dismantling, Demolition or Removal of Improvements. In accordance with 4-503 insert the following provision for solicitations for dismantling, demolition or removal of improvements:

BONDS OR OTHER SECURITY (1976)

A bid bond (Standard Form 24) in the penal sum of \$ _____ must accompany the bid. Within ten (10) days after receipt of a notice of award, the contractor shall furnish a performance bond (Standard Form 25) in the penal sum of \$ _____ and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the

Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the contracting officer cash, bonds, or notes of the United States, or certified check drawn to the order of the Treasurer of the United States, or such other security as the contracting officer may deem necessary for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

3. The coverage under 16-404 should be deleted since revised coverage has been included in Part 5, Section IV, in Part 21, Section VII, and in 16-502. Paragraph 16-404 should be revised to read:

16-404 [Reserved.]

4. ASPR 18-116 should be revised to read:

18-116 Contracts for Dismantling, Demolition or Removal of Improvements. ~~See-16-404-~~ [See Part 5, Section IV.]



6/21 E Forget this pho
and use 5/6/76 phg for 7-140 3/17
approved change
DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:

DAEN-GCU

MEMORANDUM FOR: CHAIRMAN, ASPR COMMITTEE

SUBJECT: ASPR Case 75-72, Contract Format for Dismantling, Demolition
or Removal of Improvements--ASPR 16-404.2

20 February 1976

Rec'd 3/16

I. PROBLEM. To update the clause requirements under the contract format for dismantling, demolition or removal of improvements in ASPR 16-404.2, and to clarify the instructions therefor in 16-404.1.

II. RECOMMENDATION. That 16-404.1 and 16-404.2 be changed as shown in Tab A.

III. DISCUSSION.

1. The coverage in 16-404 has been reviewed along with additional clause requirements in Section VII and other Sections of ASPR for contracts in general. Proposed revisions in 16-404 in Tab A are explained below.

2. In 16-404.1(a) the word "solely" has been inserted to provide that the Davis-Bacon Act does not apply to contracts solely for dismantling, demolition or removal of improvements. This change is recommended to make the paragraph consistent with 18-701(a)(2). In addition, since such contracts are often followed by construction, two additional clarifying sentences are recommended. In paragraph (b) "demolition" has been changed to "dismantling or demolition." Coverage has also been included requiring the contracting officer to make a determination of fair market value of property title to which is to be vested in the contractor. This will have a bearing on the amount of money consideration, if any, that may be payable to the contractor and in determining whether further compensation may be made in the event of termination for convenience or for default. The order of paragraphs (c) and (d) has been reversed. The present paragraph (d) contains instructions regarding the payment provision of the form which is also the subject of paragraph (b). The present paragraph (c) contains instructions regarding bonding requirements.

3. The following comments and recommendations are made with respect to clauses in the present coverage in 16-404.2:

a. Clauses 5 through 37 have been renumbered as clauses 6 through 39 due to the insertion of new clauses 5 and 26 as noted in paragraph 4 below.



20 February 1976

SUBJECT: ASPR Case 75-72, Contract Format for Dismantling, Demolition or Removal of Improvements--ASPR 16-404.2

b. Clause 2, Alternate 1, Payment by Government to Contractor. Paragraph (a) has been revised to leave the retention of a percentage of progress payments to the discretion of the contracting officer, which is consistent with the recommendation for construction contracts under ASPR Case 75-120. Minor editorial changes have been made in paragraph (b), i.e., "faithful performance" has been changed to "performance" and "property to be demolished" has been changed to "property to be dismantled or demolished." In paragraph (c) the language "properly executed and duly certified voucher" has been changed to "properly executed voucher", which is the language of the payments clause for construction contracts.

c. Clause 2, Alternate 2, Payment by Contractor to Government. In the first sentence of paragraph (a) the language "title to all property" has been clarified to read "title to all property to be dismantled or demolished." In paragraph (b) the language "before proceeding with demolition" has been changed to "before proceeding with dismantling or demolition."

d. Clause 6, Termination for Default--Damages for Delay--Time Extensions. When the contract format for dismantling, demolition or removal of improvements was approved for use in the Corps of Engineers by the Director of the Purchases Division, Headquarters, Army Service Forces, on 2 June 1944, the procedure to be followed in the event of termination for default as to the handling of property title to which was vested in the contractor was included in the Delays-Damages clause. The clause specifically provided that if the contractor's right to proceed was terminated, title to property vested in the contractor would revert in the Government, except as to such property as the contractor had disposed of by bona fide sale or property which had been removed from the site by the contractor. We believe that the omission of this language from the present format in ASPR should be corrected and that paragraph (a) of the clause in 7-602.5 should be revised as set out in Tab A to cover reversion of title to such property in the Government in the event of termination.

e. Clause 7, Termination for Convenience of the Government. Minor editorial changes have been made in the text, i.e., the requirement to delete "CONSTRUCTION" from the clause title in 7-602.29(a), the inclusion of the reference to the incorporation by reference clause in 7-602.29(b), under ASPR Case 75-120, and the redesignation of the clause for use in contracts not exceeding \$10,000 from paragraph 7-602.29(b) to 7-602.29(c), also under ASPR Case 75-120. Since the contract format approved in 1944 also specifically provided for handling of property title to which vested in the contractor in the event of termination for convenience of the Government, we have included coverage for that purpose in all three termination

20 February 1976

SUBJECT: ASPR Case 75-72, Contract Format for Dismantling, Demolition
or Removal of Improvements--ASPR 16-404.2

for convenience clauses in Tab A, but the need therefor is not as great in a termination for convenience as it is in a termination for default.

f. Clause 11, Inspection and Acceptance. The requirement in the present ASPR is to include the clause in 7-602.11. This clause is for use in construction contracts and by the very nature thereof has very little application to contracts for dismantling or demolition. The contract format approved in 1944 contained an Inspection clause specifically adapted for dismantling or demolition contracts and was used in contracts of the Corps of Engineers until the format was included in ASPR. We recommend that this clause set out in Tab A be included in the format in lieu of 7-602.11.

g. Clause 17, Additional Bond Security. The requirement to insert the clause in 7-103.9 has been changed to the clause in 7-602.17. Under ASPR Case 75-120 the recommendation was made to insert in 7-602.17 the revised "Additional Bond Security" clause appearing in the April 1975 Edition of Standard Form 23-A in lieu of the cross reference to the clause in 7-103.9. The revised clause requires the contractor to furnish additional security if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the contracting officer. The clause in 7-103.9 does not contain this requirement.

h. Clause 19, Officials Not to Benefit. The reference to the clause in 7-602.19 has been changed to 7-103.19. Under ASPR Case 75-120 due to the revision of the clause in the April 1975 Edition of Standard Form 23-A, we recommended deletion of the clause coverage in 7-602.19 and the substitution of a cross reference to the clause in 7-103.19.

i. Clause 22, Equal Opportunity. The reference to "appropriate contract clause" in 7-103.18(a) has been changed to "the clause." There is only one clause in 7-103.18(a), and the clause in 7-103.18(b) is for inclusion in Federally assisted construction contracts.

j. Clause 24, Liability for Government Retained Property. This clause presently provides that the contractor assumes the risk of and shall be responsible for any loss of or damage to items of property title to which remains in the Government. We recommend deletion of "RETAINED" in the clause title and inclusion in the clause of a provision requiring contractor liability for items of property title to which is vested in the contractor but which is revested in the Government upon notice of termination. In the contract format approved in 1944 this provision was set out in the termination clauses, but we believe it is proper for inclusion in Clause 24.

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k. Clause 28, Cleaning Up. The present ASPR requires inclusion of the clause in 7-602.40. This clause is for use in construction contracts. We have revised the clause by changing "construction area" to "dismantling or demolition area", changing "upon completion of the construction" to "upon completion of the dismantling or demolition", and changing "leave the work and premises" to "leave the premises."

l. Clause 29, Accident Prevention. The present ASPR coverage requires inclusion of the clause in 7-602.42. We have made an editorial change to require inclusion of the clause in 7-602.42(a), and the addition to the clause of paragraph (e) set out in 7-602.42(b) in contracts involving work of long duration or of hazardous character.

m. Clause 30, Availability of Utility Services. The present ASPR coverage requires inclusion of the clause in 7-603.30. We have made an editorial change to require inclusion of the clause in accordance with the instructions in 7-603.30 if the contract is for performance at Government installations and changing the last word of the clause "construction" to "dismantling or demolition."

4. The following provisions presently included in dismantling and demolition contracts of the Naval Facilities Engineering Command are recommended for inclusion in 16-404.2:

a. Clause 5 Differing Site Conditions which is the clause in 7-602.4 for construction contracts.

b. Clause 26 Protection of Existing Vegetation, Structures, Utilities and Improvements which is the clause in 7-602.34 for construction contracts changing the words "construction work", to, "dismantling or demolition work."

5. The following provisions not now required by 16-404.2 have been added as clauses 40 through 55, with instructions for the use thereof, and the present clause 38 Alterations has been redesignated clause 56:

Service Contract Act of 1965
Examination of Records by Comptroller General
Pricing of Adjustments
Listing of Employment Openings
Employment of the Handicapped
Clean Air and Water
Payment of Interest on Contractors' Claims
Value Engineering Incentive

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Utilization of Small Business Concerns
Small Business Subcontracting Program
Utilization of Minority Business Enterprises
Minority Business Enterprises Subcontracting Program
Price Reduction for Defective Cost or Pricing Data
Audit by Department of Defense
Subcontractor Cost or Pricing Data
Privacy Act

6. We have considered the desirability of including a clause covering the EPA regulation on the control of asbestos emissions during dismantling or demolition. The Departments have implemented the requirement by separate documents. One of these documents is an Engineer Technical Letter 1110-1-77 for use in the Corps of Engineers. Attached to this ETL is an excerpt from 40 CFR 61.22(d) issued in 1973 and 1974 which sets out the procedure to be followed by contractors to prevent emissions of particulate asbestos material to outside air. In addition to this guidance, Corps of Engineers Guide Specification CE-02110 calls attention to this ETL but specifically cautions the specification writers of the necessity to incorporate the latest EPA requirements when demolishing buildings containing asbestos as defined in the regulation. The contract provision in 40 CFR 61.22(d)(2) attached to the ETL contains three paragraphs defining what the contractor must do, whereas a more recent revision to the coverage in the Federal Register of 14 October 1975 (40 F.R. 48300) provides in 40 CFR 61.22(d)(4) a contract provision consisting of seven paragraphs, superseding the coverage attached to the ETL. Until such time as the EPA regulation on the control of asbestos emissions is finalized, we recommend that a clause not be included in the contract format in 16-404.2, but that the Departments continue to issue the necessary implementation.

7. All members of the Subcommittee concur in this report. Mr. Sam Gorelick and Mr. J. J. Hawkins of OSD(I&L) served as consultants to the Subcommittee on this case. Mr. Morris Pullara, Jr served for Mr. Robert J. Robertory on this case.

CONSTRUCTION SUBCOMMITTEE

Gary W. Hudiburgh

Gary W. Hudiburgh, Chairman, OCE-Army
Morris Pullara, Jr., NAVFAC-Navy

Thomas V. Clark, NAVFAC-Navy

Emmert J. Roalkvam, AF/LGPIA-Air Force

James H. Micklish, AF/LGPI-Air Force

French W. Holt, DCAS-HR-Defense Supply Agency

1 Incl
Tab A

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[56.] ~~38.~~ *Alterations in Contract.* ~~Insert the clause in 7-604.1~~

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____ (Contracting Officer)

(Contractor) _____

By _____

(Title) _____

16-405 Miscellaneous Forms.

16-405.1 Performance Evaluation-Architect-Engineer Professional Services Contractor (DD Form 1413). DD Form 1413 is prescribed for use in accordance with 18-403.4 to provide an orderly and uniform method of determining and recording how effectively architect-engineer professional services contractors meet their contractual commitments. It shall be completed by the cognizant construction activity upon the completion or termination of architect-engineer professional services contracts of \$10,000 or more.

16-405.2 Construction Contractor Performance Evaluation Report (DD Form 1596). DD Form 1596 is prescribed for use in accordance with 18-106.2 to provide an orderly and uniform method of determining and recording how effectively construction contractors meet their contractual commitments.

16-405.3 Experience Data Forms.

(a)(1) The Architect-Engineer and Related Services Questionnaire (Standard Form 254, July 1975 edition) is designed to provide for uniform presentation, by architect-engineer firms, of information regarding their general professional qualifications and shall be used in lieu of any corresponding Departmental form. This form shall be used whenever a Construction Activity desires to obtain such information for use in contracting for services of an architect-engineer nature relating to construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. Services related to construction include planning, engineering studies, investigations, development of design, preparation of plans and specifications, and inspection and supervision of work performed during the construction period. (See 18-403.3)

(2) Architect-Engineer and Related Services Questionnaire for Specific Project (Standard Form 255, July 1975 edition) is designed to supplement the Standard Form 254; it will be used to secure additional, specific detailed information on the prospective firms' qualifications for a particular project. This supplemental form shall be used to secure such supplemental data whenever the fee for the project is estimated at \$10,000 or more, however, in accordance with Departmental regulations this threshold figure may be increased to \$25,000.

The form may also be used for those projects for which the fee is estimated at less than \$10,000 when it is determined to be in the best interest of the Government by the contracting officer, at his discretion. (See 18-403.3)

(3) Use of the forms prescribed in subparagraphs (a)(1) and (a)(2) above is not required in the procurement of architect-engineer services related to construction, alteration, repair, processing and assembling of vessels, aircraft, or other kinds of personal property.

16-405.3

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(1) Change the title of the form to read: REPRESENTATIONS AND CERTIFICATIONS (CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS (For use with Standard Forms 19, 21, and 252).

(2) Change the Reference block to read: Reference (Enter same (No(s). as on SF 19, 21 and 252).

(3) Change (c) of paragraph 1, Small Business, to read: (c) Had average annual receipts for the preceding 3 fiscal years not exceeding \$7,500,000 for construction contracts, \$1 million for architect-engineer contracts primarily architectural, and \$5 million for architect-engineer contracts primarily engineering.

16-403.3 Statement of Architect-Engineer Services. The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of such services inserted in Appendix A (Scope of Work) of the contract. The statement should clearly state the nature and extent of the services in a concise form and include any special services such as the nature and extent of sub-surface exploration prior to designing foundations, etc. A similar statement of supervision and inspection services should be prepared for inclusion in Appendix A (Scope of Work) of the contract if supervision and inspection services are included.

16-403.4 Terms, Conditions and Provisions. The use of additional contract provisions, e.g., payment schedule, surveys and subsoil information, and laboratory tests, consistent with those contained in 7-607 and 7-608 are authorized, and, where required elsewhere in ASPR, the use of such additional provisions is mandatory.

16-404 Contracts for Dismantling, Demolition or Removal of Improvements. The following format shall be used in contracting for the dismantling, demolition or removal of improvements. It shall be completed in accordance with the following instructions and shall contain the clauses set forth below.

~~**16-404.1 General.**~~

~~(a) The provisions of the Davis-Bacon Act relating to the predetermination of minimum wages for mechanics and laborers do not apply to contracts for dismantling, demolition or removal of improvements.~~

~~(b) The format set forth below contains alternate provisions regarding payment for the work to be performed. The first alternate covers a situation when the Government is to pay the contractor for the demolition of structures and conditioning of materials. Normally this provision will be used as it appears in the format. However, if it is determined that all the material resulting from the demolition work is to be retained by the Government and the contractor is to be entirely compensated by payments received under the contract, subparagraph (b) of the first alternate provision shall be deleted. The second alternate covers the situation under which the contractor will pay to the Government compensation in consideration of the right to salvage and remove, for his own use, the materials resulting from the demolition operation. The contracting officer should carefully consider the usefulness of salvageable property to the Government. Any items more useful to the Government than the value to the contractor as salvage should be expressly designated for retention by the Government. Title to any property not specifically designated for retention by the Government will vest in the contractor.~~

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~~(c) The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids.~~

(d) In special circumstances where it will be advantageous to the Government, the payment provision, Alternate 2, may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

~~(e) A copy of the contract format shall be furnished to bidders with the invitation for bids.~~

16-404.1 General.

(a) The provisions of the Davis-Bacon Act relating to the pre-determination of minimum wages for mechanics and laborers do not apply to contracts [solely] for dismantling, demolition or removal of improvements. [The Service Contract Act is applicable to contracts for dismantling, demolition or removal of improvements provided further work is not contemplated which will result in construction of a public building or public works at that location. ~~If such further construction work, even though by separate contract, is intended, then the Davis-Bacon Act must be made applicable to such contracts.~~ Subject to reclaima]

(b) The format set forth below contains alternate provisions regarding payment for the work to be performed. The first alternate covers a situation when the Government is to pay the contractor for the [dismantling or] demolition of structures and conditioning of materials. Normally this provision will be used as it appears in the format. However, if it is determined that all the material resulting from the [dismantling or] demolition work is to be retained by the Government and the contractor is to be entirely compensated by payments received under the contract, subparagraph (b) of the first alternate provision shall be deleted. The second alternate covers the situation under which the contractor will pay to the Government compensation in consideration of the right to salvage and remove, for his own use, the materials resulting from the [dismantling or] demolition operation. The contracting officer should carefully consider the usefulness of

salvageable property to the Government. Any items more useful to the Government than the value to the contractor as salvage should be expressly designated for retention by the Government. Title to any property not specifically designated for retention by the Government will vest in the contractor. [The contracting officer shall determine the fair market value of the property title to which is to be vested in the contractor, since the value thereof will have a direct bearing upon the amount of money consideration, if any, that may be payable to the contractor and in determining whether further compensation may be made in the event of termination for convenience or for default.]

[(c)] ~~(d)~~ In special circumstances where it will be advantageous to the Government, the payment provision, Alternate 2, may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

[(d)] ~~(c)~~ The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a ~~performance~~ bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids.

(e) A copy of the contract format shall be furnished to bidders with the invitation for bids.

16-404.2 Contract Format.

Contract No.

**CONTRACT FOR DISMANTLING,
DEMOLITION OR REMOVAL OF IMPROVEMENTS
DEPARTMENT OF**

CONTRACTOR AND ADDRESS.
CONTRACT FOR
LOCATION:

*PAYMENT will be made to

.....
.....
.....
.....

*PAYMENT will be made by

.....

Appropriation Data

.....
.....

THIS CONTRACT, entered into this day of 19....., by the United States of America (hereinafter called the Government), and **a Joint Venture consisting of
**....., a corporation organized and existing under the laws of the State of
**a partnership consisting of
**an individual trading as of the city of in the State of (hereinafter called the Contractor).

* Delete inapplicable phrase.

** Delete all lines which do not apply.

16-404.2

ARMED SERVICES PROCUREMENT REGULATION

PROCUREMENT FORMS

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1. *Statement of Work.*

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of *(identify property)*.

(b) The work shall be commenced and shall be completed not later than

(c) A performance bond in the penal sum of dollars (\$.....) shall be furnished by the Contractor.

(d) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

2. *Payments.* (Alternate 1 shall apply unless otherwise specified in the Schedule)

Alternate 1 **PAYMENT BY GOVERNMENT TO CONTRACTOR (JAN. 1965)** - ()

(a) In (full) (part) (delete one) consideration of the performance of the work called for in the Statement of Work, the Government will pay to the Contractor.....(words).....(figures)..... Unless otherwise provided in the specifications, progress payments will

be made monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. In making such progress payments there shall be retained 10 per cent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, ~~at any time after 50 per cent of the work has been completed~~ finds that satisfactory progress is being made, he may authorize ~~any of the remaining progress payments to be made in full~~ [was achieved during any period

for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for the protection of the Government and, at his discretion, may release to the Contractor

all or a portion of any excess amount.] Furthermore, on completion and acceptance of each separate unit or other division of the contract on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

[dismantled
or]

*(b) In further consideration of the faithful performance hereof, the Contractor shall receive title to all property to be demolished which is not specifically designated as being retained by the Government, said title to vest in the Contractor immediately upon the Contractor's receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

*Delete, if inapplicable.

(c) Upon completion and acceptance of all work required hereunder, final payment of the amount due the Contractor under this contract will be made upon the presentation of a properly executed ~~and duly certified~~ voucher therefor, and in addition, if requested, a release of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

[to be dismantled or
demolished]

Alternate 2 **PAYMENT BY CONTRACTOR TO GOVERNMENT (JAN 1965)** ()

(a) The Contractor shall receive title to all property covered by this contract not specifically designated in the specifications as being retained by the Government, said title to vest in the Contractor immediately upon receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. All property acquired by the Contractor hereunder shall be removed

from the site by the Contractor promptly, as the storage of such property on the site will not be permitted beyond the completion date hereof. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

[dismantling or]

(b) The Contractor shall perform the work called for in Clause 1 and, unless otherwise provided in the specifications, within days of the receipt of notice of award and before proceeding with demolition, shall pay.....(words).....(figures)..... Checks shall be made payable to the Treasurer of the United States and shall be forwarded to the Contracting Officer.

3. ~~Specifications and Drawings.~~ {Insert the clause in 7-602.2.}

4. ~~Changes.~~ {Insert the clause in 7-602.3.}

[5. Differing Site Conditions. Insert the clause in 7-602.4.]

[6.] 5- Termination for Default--Damages for Delay--Time Extensions. {Insert the clause in 7-602.5.} [, amending paragraph (a) to provide specifically for revesting of title in the Government of property, title to which under the terms of the contract is vested in the Contractor, in the event of termination for default. The following sentence shall be inserted between the second and third sentences of paragraph (a):

"In addition, if title to property is vested in the Contractor under this contract it shall revert in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor."

[7.] 6- Termination for Convenience of the Government.

{In accordance with 8-701(a) and (c), [in contracts exceeding \$10,000 in value], insert the termination clause in 7-602.29(a) ~~contracts-exceeding-\$10,000-in-value-~~ [, deleting "CONSTRUCTION" from the clause title, or the clause in 7-602.29(b).] In contracts not exceeding \$10,000 the clause in 7-602.29(b){(c)}

may be inserted. [The following changes shall be made in the three termination clauses to provide specifically for revesting of title in the Government of property, title to which under the terms of the contract is vested in the contractor, in the event of termination for convenience of the Government:

(i) 7-602.29(a) clause. Add the following sentence to paragraph (a) of the clause: "Upon receipt by the Contractor of the notice of termination, if title to property is vested in the Contractor under this contract, it shall revest in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor."

(ii) 7-602.29(b) and (c) clauses. Add the following to each of the clauses: "In addition, upon receipt by the Contractor of the notice of termination, if title to property is vested in the Contractor under this contract, it shall revest in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor."]

[8.] ~~7-~~ Disputes. {Insert the appropriate clause in 7-602.6.}

[9.] 8- Assignment of Claims. {Insert the clause in 7-602.8.}

[10.] 9- Workmanship.

WORKMANSHIP ~~{JAN-1965}~~ [(1965 JAN)]

All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless or otherwise objectionable.

[11.] 10- Inspection and Acceptance. {insert-the-clause-in
7-602-11-}

[INSPECTION ()

(a) All workmanship (if not otherwise designated by the specifications) shall be subject to inspection and examination by Government inspectors at any and all times during dismantling or demolition and at any and all places where such dismantling or demolition are carried on. The Contractor shall be responsible for any damage to property caused by unworkmanlike performance or by defective workmanship. Any unsatisfactory facilities, materials, and equipment, used by the Contractor, shall be replaced with satisfactory facilities, materials, and equipment, and the Contractor shall promptly segregate and remove such unsatisfactory items from the premises. If the Contractor fails to proceed at once in a workmanlike manner with the performance of the work or with the correction of defective workmanship, the Government may by contract or otherwise, replace such facilities, materials, and equipment or correct such workmanship and charge the cost thereof to the Contractor, and may terminate the right of the Contractor to proceed as provided in

the "Termination for Default--Damages for Delay--Time Extensions" clause of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said clause for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection by Government inspectors. All inspection by the Government shall be performed in such manner as not unnecessarily to delay the work.]

[12.] ~~11-~~ Superintendence by Contractor. {Insert the clause in 7-602.12.}

[13.] ~~12-~~ Permits and Responsibilities. {Insert the clause in 7-602.13 except the last sentence shall be omitted.}

[14.] ~~13-~~ Conditions Affecting the Work. {Insert the clause in 7-602.14.}

[15.] ~~14-~~ Other Contracts. {Insert the clause in 7-602.15.}

[16.] ~~15-~~ Gratuities. {In accordance with 7-104.16 insert the contract clause therein.}

[17.] ~~16-~~ Additional Bond Security. (Insert the clause in 7-103-9.} [7-602.17.]

[18.] ~~17-~~ Covenant Against Contingent Fees. {Insert the clause in 7-103.20.}

[19.] ~~18-~~ Officials Not to Benefit. {Insert the clause in 7-602-19.} [7-103.19.]

[20.] ~~19-~~ Contract Work Hours and Safety Standards Act--Overtime Compensation. {Insert the clause in 7-103.16(a).}

[21.] 20- Convict Labor. {Insert the clause in 7-104.17.}

[22.] 21- Equal Opportunity. {In accordance with 7-103.18(a)},
insert the ~~appropriate-contract~~ clause therein.}

[23.] 22- Federal, State and Local Taxes. {Insert the clause
in 7-103.10(a)}.

[24.] 23- Liability for Government Retained Property.

LIABILITY FOR GOVERNMENT RETAINED PROPERTY (~~1965-JAN~~) ()

As to [(i)] items of property, title to which remains in the
Government and which are to be delivered to the Government by the
Contractor in the performance of the work, [and (ii) items of
property, title to which is vested in the Contractor but which
under the termination clauses of this contract is revested in
the Government upon notice of termination,] the Contractor
assumes the risk of and shall be responsible for any loss
thereof or damage thereto except for reasonable wear and tear
incident to removal and delivery to the Government.

[25.] 24- Site Investigation. {Insert the clause in 7-602.33.}

[26. Protection of Existing Vegetation, Structures, Utilities,
and Improvements. Insert the clause in 7-602.34, changing the words
"construction work" at the end of the first sentence to "dismantling
or demolition work".]

[27.] 25- Operation and Storage Area. {Insert the clause in
7-602.35.}

[28.] 26- Cleaning Up. ~~{Insert the clause in 7-602.40.}~~

{CLEANING UP ()

The Contractor shall at all times keep the dismantling
or demolition area, including storage areas used by him, free

from accumulations of waste material or rubbish and prior to completion of the work remove from the premises any rubbish and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the dismantling or demolition the Contractor shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.]

[29.] 27- Accident Prevention. {Insert the clause in 7-602.42[(a). In contracts involving work of long duration or of hazardous character, add the paragraph (e) in 7-602.42(b).}]

[30.] 28- Availability of Utility Services. {Insert [If the contract is for performance at Government installations, insert] the clause in 7-603.30 [in accordance with instructions therein, changing the last word of the clause, "construction", to, "dismantling or demolition".]}

[31.] 29- Misplaced Material. {If the contract involves work on or adjacent to a navigable stream, insert the clause in 7-603.32.}

[32.] 30- Signal Lights. {If the contract involves the use of marine equipment, insert the clause in 7-603.33.}

[33.] 31- Military Security. {In accordance with 7-104.12, insert the ~~contract~~ clause set forth therein in contracts involving classified facilities except in those contracts to be performed outside the United States, its possessions and Puerto Rico.}

[34.] 32- Identification of Employees. {In accordance with 7-603.34, insert the clause set forth therein where identification is required for security or other reasons.}

[35.] 33- Composition of Contractor. {Insert the clause in 7-602.32.}

[36.] 34- Renegotiation. {In accordance with 7-103.13, insert the appropriate contract clause therein.}

[37.] 35- Interest. {Insert the clause in 7-104.39.}

[38.] 36- Definitions. {Insert the clause in 7-602.1.}

[39.] 37- Liquidated Damages. {Insert the clause in 7-603.39. The rate of liquidated damages will be determined in accordance with 18-113.}

[40.] Service Contract Act of 1965. In accordance with Part 10, Section XII, insert the appropriate clause in 7-1903.41(a) or (b).

41. Examination of Records by Comptroller General. In accordance with 7-104.15, insert the clause therein in negotiated contracts in excess of \$10,000.

42. Pricing of Adjustments. Insert the clause in 7-103.26.

43. Listing of Employment Openings. Insert the clause in 7-103.27.

44. Employment of the Handicapped. In accordance with 12-302(a), insert the clause in 7-103.28.

45. Clean Air and Water. In accordance with 1-2302.2, insert the clause in 7-103.29.

46. Payment of Interest on Contractors' Claims. In accordance with 1-333, insert the clause in 7-104.82.

47. Value Engineering Incentive. Insert the clause in 7-602.50.

48. Utilization of Small Business Concerns. In accordance with 1-707.3(a), insert the clause in 7-104.14(a).

49. Small Business Subcontracting Program. In contracts which may exceed \$500,000 and which contain the clause in 7-104.14(a), insert the clause in 7-602.26(b), deleting "(MAINTENANCE, REPAIR AND CONSTRUCTION)" from the clause title.

50. Utilization of Minority Business Enterprises. In accordance with 1-332.2, insert the clause in 7-104.36(a).

51. Minority Business Enterprises Subcontracting Program. In accordance with 1-332.2, insert the clause in 7-104.36(b).

52. Price Reduction for Defective Cost or Pricing Data. In accordance with 7-104.29, insert the appropriate clause therein.

53. Audit by Department of Defense. In accordance with 7-104.41, insert the clause therein.

54. Subcontractor Cost or Pricing Data. In accordance with 7-104.42, insert the appropriate clause therein.

55. Privacy Act. In accordance with 1-327.1, insert the clause in 7-104.96.]

E. has copy
My copy
Attached first page - ch's down thru item 22. app'd for print.
TLC 4/17

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310



15 April 1975

SAAS-IL-ASPR

MEMORANDUM FOR: CHAIRMAN, ASPR COMMITTEE

SUBJECT: Contract Format for Dismantling, Demolition or Removal
of Improvements, ASPR 16-404.2 (Case 75-72)

1. PROBLEM: Subject provision requires modification to conform with changes made under Case 71-122. Further, the format does not appear to have kept pace with ASPR requirements for inclusion of various clauses under stated circumstances.
2. RECOMMENDATION: Consideration should be given to conforming subject paragraph with Case 71-122 changes, and to expanding the clause listing, all in accordance with Inclosure 1.
3. DISCUSSION: The changes indicated by Inclosure 1 are generally self-explanatory.

1 Incl
as

R. L. Schooling
R. L. SCHOOLING
Army Policy Member
ASPR Committee



Contract Format for Dismantling, Demolition or
Removal of Improvements
ASPR 16-404.2

Page 16:27:

✓ Delete the sixth line which reads: "1. Statement of Work." This is a duplication of what appears in the ninth line.

Page 16:28:

✓ 5. Termination for Default--Damages for Delay--Time Extensions. (Insert the clause set forth in 8-799 [7-602.5].)

X 6. Termination for Convenience of the Government. (In accordance with 8-701(a) and (b) [(c)], insert the termination clause [in 7-602.29(a), ~~deleting "CONSTRUCTION" from the clause title,~~] in contracts exceeding \$10,000 in value. In contracts not exceeding \$10,000 the clause in 8-705-2 [7-602.29(b)] may be inserted.)

. . .

✓ 19. Contract Work Hours and Safety Standards Act--Overtime Compensation. (Insert the clause in 12-303 [7-103.16(a)].)

✓ 20. Convict Labor. (Insert the clause set forth in 12-303 [7-104.17].)

X 21. Equal Opportunity. (In accordance with 12-804 [7-103.18(a)], insert the clause set forth therein.)

22. Federal, State and Local Taxes. (Insert the clause set forth in 11-401.1 [7-103.10(a)].)

. . .

Page 16:29:

35. Interest. (Insert the clause set forth in E-620 [7-104.39].)

. . .

Incl. 1

- [38. Service Contract Act of 1965. (In accordance with Part 10, Section XII, insert the appropriate clause in 7-1903.41(a) or (b).)
39. Examination of Records. (In accordance with 7-104.15, insert the clause therein in negotiated contracts in excess of \$2,500.)
40. Listing of Employment Openings. (Insert the clause in 7-103.27.)
41. Pricing of Adjustments. (Insert the clause in 7-103.26.)
42. Payment of Interest on Contractors' Claims. (In accordance with 1-333, insert the clause in 7-104.82.)
43. Value Engineering Incentive. (Insert the clause in 7-602.50.)
44. Utilization of Small Business Concerns. (In accordance with 1-707.3(a) insert the clause in 7-104.14(a).)
45. Small Business Subcontracting Program. (In contracts which may exceed \$500,000 and which contain the clause in 7-104.14(a), insert the clause in 7-602.26(b), deleting "(MAINTENANCE, REPAIR AND CONSTRUCTION)" from the clause title.)
46. Utilization of Minority Business Enterprises. (In accordance with 1-332.2 insert the clause in 7-104.36(a).)
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48. Price Reduction for Defective Cost or Pricing Data. (In accordance with 7-104.29 insert the appropriate clause therein.)
49. Audit by Department of Defense. (In accordance with 7-104.41 insert the clause therein.)
50. Subcontractor Cost or Pricing Data. (In accordance with 7-104.42 insert the appropriate clause therein.))
- 38- [51.] Alterations in Contract. (Insert the clause set forth in 7-604.1.)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

HO 4/16
(See below)

15 April 1975

SAAS-IL-ASPR

MEMORANDUM FOR: CHAIRMAN, ASPR COMMITTEE

SUBJECT: Contract Format for Dismantling, Demolition or Removal
of Improvements, ASPR 16-404.2 (Case 75-72)

1. PROBLEM: Subject provision requires modification to conform with changes made under Case 71-122. Further, the format does not appear to have kept pace with ASPR requirements for inclusion of various clauses under stated circumstances.
2. RECOMMENDATION: Consideration should be given to conforming subject paragraph with Case 71-122 changes, and to expanding the clause listing, all in accordance with Inclosure 1.
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R. L. SCHOOLING
Army Policy Member
ASPR Committee

Admin chg's app'd for print
Balance - refer to Court. S/Cte
Report 6/9



Contract Format for Dismantling, Demolition or
Removal of Improvements
ASPR 16-404.2

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6. Termination for Convenience of the Government. (In accordance with 8-701(a) and (b) [(c)], insert the termination clause [in 7-602.29(a), ~~deleting "CONSTRUCTION" from the clause title,~~ in contracts exceeding \$10,000 in value. In contracts not exceeding \$10,000 the clause in 8-705.2 [7-602.29(b)] may be inserted.)
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19. Contract Work Hours and Safety Standards Act—Overtime Compensation. (Insert the clause in 11-303 [7-103.16(a)].)
20. Convict Labor. (Insert the clause set forth in 11-203 [7-104.17].)
21. Equal Opportunity. (In accordance with 11-304 [7-103.18(a)], insert the clause set forth therein.)
22. Federal, State and Local Taxes. (Insert the clause set forth in 11-401.1 [7-103.10(a)].)
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