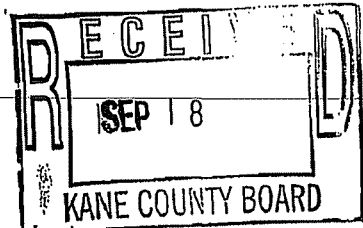


County of Kane  
Office of County Board  
Kane County Government Center



Karen McConnaughay  
Chairman  
630-232-5930



719 Batavia Avenue  
Geneva, Illinois 60134  
Fax 630-232-9188

**DOCUMENT VET SHEET**

for  
Karen McConnaughay  
Chairman, Kane County Board

Name of Document: Contract for Professional Services

Submitted By: Jodie Wollnik

Date Submitted: 9/18/12

Examined By: Joseph Lulves  
(Print Name)

[Signature]  
(Signature)

9-20-12  
(Date)

Post on Web: Yes  No  Atty Initials [Initials]

Comments: (12-270) Resolution - SEPTEMBER 11, 2012  
Chairman signed 926 Resolution

Chairman Signed: Yes  No  Date: SEPTEMBER 26 2012

Document Returned To: Jodie Wollnik - Water Resources

STATE OF ILLINOIS

COUNTY OF KANE

RESOLUTION NO. 12 - 270

**AUTHORIZING THE EXECUTION OF A CONTRACT WITH ESI CONSULTANTS, LTD FOR THE PASADENA DRIVE COST-SHARE DRAINAGE PROJECT CONSTRUCTION OBSERVATION SERVICES**

WHEREAS, the Water Resources Division administers the Cost-Share Drainage Program for the older residential subdivisions in Kane County that are experiencing drainage problems; and

WHEREAS, the Pasadena Drive Flood Route and Bypass Storm Sewer project will be constructed this fall and given the large scope of the project, in house staff resources are not available to provide the necessary construction observation for the project; and

WHEREAS, a Request for Qualifications was sent to qualified professional engineering firms that are capable of providing construction engineering services and eight (8) firms responded; and

WHEREAS, ESI Consultants, LTD of Naperville, Illinois has experience and professional expertise in this area, is qualified to provide the required services, and is willing to perform the required services in accordance with the project schedule for an amount not to exceed Twenty Three Thousand, Three Hundred Nineteen Dollars (\$23,319.00); and

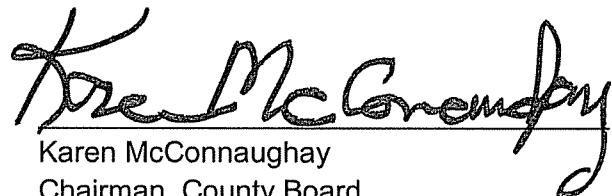
WHEREAS, it has been determined that it is in the County's best interest to enter into an agreement with ESI Consultants, LTD for professional engineering services.

NOW, THEREFORE, BE IT RESOLVED by the Kane County Board that the Chairman thereof is hereby authorized to execute an agreement with ESI Consultants, LTD for professional engineering services for Construction Observation of the Pasadena Drive Cost-Share Drainage Project.

Line Item	Line Item Description	Was personnel/item/service approved in original budget or a subsequent budget revision?	Are funds currently available for this personnel/item/service in the specific line item?	If funds are not currently available in the specified line item, where are the funds available?
406.690.721.55050	CDBG - IKE PROGRAM	Yes	Yes	N/A

Passed by the Kane County Board on September 11, 2012.

\_\_\_\_\_  
John A. Cunningham  
Clerk, County Board  
Kane County, Illinois

  
Karen McConnaughay  
Chairman, County Board  
Kane County, Illinois

Vote:  
Yes \_\_\_\_\_  
No \_\_\_\_\_  
Voice \_\_\_\_\_  
Abstentions \_\_\_\_\_  
9PasadenaESI

**CONTRACT FOR PROFESSIONAL SERVICES**  
**Agreement for Professional Engineering Services**

This agreement is entered into this 26<sup>th</sup> day of September, 2012, and will be effective as of the date of final execution of this contract, between the COUNTY OF KANE with offices at 719 S. Batavia Avenue, Geneva, Illinois 60134 (the "*County*"), a body corporate and politic existing under the laws of the State of Illinois and a unit of local government under §1 of Article VII of the Illinois Constitution (Ill. Const., Art. VII, §1), and ESI Consultants, LTD with an office in Naperville, IL (the "*Consultant*"). For and in consideration of the mutual promises set forth herein, the parties agree as follows:

**§ 1. Purpose of agreement** The County hereby retains the Consultant to provide resident engineering services for the Pasadena Drive Bypass Storm Sewer project in Aurora Township, IL.

**§ 2. Scope of services**

The services to be provided by the Consultant (the "*Work*"), are: construction observation services under the direction of Huddleston-McBride Drainage Company. Services shall include on-site observation, field reports, and review of pay estimates and change orders. Hours billed shall not exceed 20 hours average. It will be left to the discretion of the field engineer and Huddleston-McBride to schedule observation hours in coordination with the contractor such that difficult areas and roadway/utility crossings are covered. This may result in weekly hours exceeding 20 hour per week. Operations such as cleanup and site preparation/mobilization require less observation and therefore it would be expected those weeks would result in less than 20 hours billed. The not to exceed contract amount assumes a 13 week construction schedule.

**§ 3. Term of this agreement**

The term of this agreement will commence as of the date hereof and continue, unless earlier terminated in accordance herewith, until the Work is completed.

**§ 4. Relationship of parties**

The Consultant will serve as the County's professional engineer in the performance of the Work. The relationship between the parties is that of a buyer and seller of professional services and as such the Consultant is an independent contractor of the County in the performance of the Work and it is understood that the parties have not entered into any joint venture or partnership. The Consultant is not an employee or the agent of the County for any purpose.

**§ 5. Compensation**

- (a) The County will pay the Consultant an amount not to exceed \$23,319.00 for which the Consultant will fully complete the Work. The Consultant will submit to the County an itemized monthly invoice reflecting the work completed within the preceding calendar month and the time spent thereon. The monthly invoice will also include a summary of all previous invoices up to, and including, the invoice for the current month. The Work will be billed at the hourly rates set forth in **Exhibit 1**. The County will pay each such invoice within 45 days of its receipt.

**§ 6. Terms and conditions**

- (a) The Director of the Kane County Water Resources Division (The "**Director**"), or his written designee, shall act as the County's representative (the "**Client**") with respect to the Work and shall transmit to and receive from the Consultant information with respect to the Work. The Consultant shall coordinate all work through the Client and shall report results of all work directly to the Client.
- (b) The Director may, by written order, make changes in specific work items if such changes are within the scope of services set forth above. If any such change is not within the scope of services, the Consultant will so notify the Director and will submit a proposed change order reflecting an increase (or decrease) in the work. Hourly rates for additional work will be consistent with those set forth in **Exhibit 1**. No such change order will be effective to modify this agreement unless it has first been reduced to writing and approved by all undersigned parties.
- (c) The County may, anytime and without cause, upon notice to the Consultant terminate this agreement before completion of the Work. Upon termination, the Consultant will cease all work under this agreement and will turn over to the County all information, records, documents, data, property, publications or other material theretofore received or prepared by the Consultant under or resulting from this agreement, all of which will become the property of the County. The Consultant will submit a final invoice for all work done through the date of termination which will be paid within 45 days of its receipt. In the event of termination, only actual time spent and expenses incurred in the performance of the Work prior to termination will be compensated. The County will have no liability for lost profits, overhead or other consequential or incidental damages. In the event of termination, the County will be free to abandon the work or retain another consultant to complete the Work.
- (d) The obligations of the County under this agreement are contingent upon the prior appropriation of funds by the Kane County Board if applicable.
- (e) The Consultant will maintain books, records, documents, time sheets and other evidence pertinent to its performance of the Work according to generally accepted accounting principles and practices consistently applied. The County or its authorized representatives will have access to such books, records, documents and other evidence for inspection, audit, and copying. The Consultant will provide appropriate facilities for such access and inspection during normal business hours.
- (f) Federal Terms and Conditions are set forth in **Exhibit 2**. If duplication between County and Federal requirements exists, the stricter requirement shall apply.

except Workmen's Compensation and Professional Liability, and provides that the County will receive not less than 30 days' prior written notice of any cancellation of or material change in the policy.

**§ 11. Equal Employment Opportunity**

Section 6.1 of the Illinois Department of Human Rights Rules and Regulations is hereby incorporated herein by this reference as though fully set forth.

**§ 12. Prevailing Wage Rates**

It is the policy of the State of Illinois as declared in the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) "that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works".

The Consultant agrees to pay, when applicable, the current Illinois Department of Labor Prevailing Wage Rates for all County of Kane projects. Current prevailing wage rates are available from the Illinois Department of Labor at their website: <http://www.state.il.us/agency/idol/rates/rates.htm>.

Prevailing wage rates are subject to revision monthly. The Consultant acknowledges its responsibility, for payment of any applicable future adjustment thereof. The Consultant further acknowledges its responsibility to notify any sub-consultant of the applicability of the Prevailing Wage Act. When applicable, the Consultant agrees to provide the Kane County Water Resources "certified payrolls" as required by the Prevailing Wage Act .

**§ 13. No subcontracts**

The Consultant will be held responsible for the performance of the Work. No part of the Work may be the subject of a subcontract between the Consultant and any other person without the prior written consent of the Director.

**§ 14. Notice**

Any notice, invoice, certification or communication required or permitted hereunder shall be sufficiently given if served personally, sent *via* fax, or sent by first class mail, postage prepaid to the Kane County Water Resources Division, attention Paul Schuch, Director, Kane County Government Center, 719 S. Batavia Ave., Geneva, IL 60134, (Fax No. 630/208-3837).

Notice *via* fax shall be effective as of the date and time set forth on the fax transmittal sheet produced by the sending fax machine. Notice by first class mail shall be effective four days after mailing.

**§ 15. Miscellaneous**

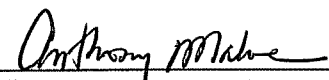
- (a) This agreement constitutes the entire agreement between the parties and supersedes any prior agreement relating to the subject matter hereof. This agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

- (b) The agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any action brought under or which relates to this agreement shall be brought in Kane County, Illinois.
- (c) This agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns, provided, however, that neither party may assign this agreement without the prior written consent of the other.
- (d) The waiver by one party of any breach of this agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance and shall not be deemed to be a waiver of any future breach or a waiver of any provision of this agreement.
- (e) Nothing in this agreement shall be construed as creating any personal liability on the part of any officer, employee or agent of any public body that may be a party to this agreement, nor shall it be construed as giving any rights or benefits under this agreement to anyone other than the parties hereto.
- (f) All exhibits referred to in this agreement are attached and by this reference incorporated herein as though fully set forth.
- (g) This agreement may be executed in any number of counterparts, all such counterparts taken together constituting but one and the same agreement.
- (h) If any action is filed under or relating to this agreement, the non-prevailing party (as determined by the Court) shall pay, in addition to all other amounts which the non-prevailing party may be ordered to pay, the prevailing party's costs, expenses and reasonable attorney's fees.

The County of Kane

*ESI Consultants, LTD*

  
\_\_\_\_\_  
Karen McCondughay  
County Board Chairman

  
\_\_\_\_\_  
Name Anthony Mabone  
Title Vice President

SEPTEMBER 26, 2012  
Date

8/6/12  
Date

**EXHIBIT 1**

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**(Fee Estimate)**

*See attached Fee Estimate*

**County of Kane  
Professional Engineering Design Services  
Pasadena Drive Construction Observation Project**

TASK					Direct Expenses	TOTAL
	Project Director	Sr. Prjct Manager	Resident Engineer	Clerical		
<b>Construction Observation</b>						0
20Hrs/Wk x 13 wks			260			
Direct Expenses					2000	
<b>Administration / QA/QC</b>		4		4		8
Hours	0	4	260	4		\$268
Rate	\$227	\$176	\$78	\$65		
Fee	\$0	\$702	\$20,358	\$259	\$2,000	\$23,319

1. The costs and hours are based on one part-time site representative who bills not more than 20 hours per week. This means that the employee will not be on site for 20 hours per week as there will be daily reports, time sheets, pay estimates and change orders to prepare as well as driving time.
2. The construction representative will include a walk through with the County Staff, Construction Liaison, Aurora Township Highway Department, utility company representatives and contractor to prepare an initial punch list. It is anticipated that County Staff or Construction Liaison will follow up with the contractor unless specifically requested by them to provide this followup and the budget is available.
3. As the number of weeks anticipated to be given to the contractor was not provided, ESI assumed a 13 week construction schedule. The estimated manhours and associated fee will be revised depending on the actual weeks worked.



**EXHIBIT 2**

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**(Federal Terms and Conditions)**

*See attached Terms and Conditions*

# CONTRACT FOR PROFESSIONAL SERVICES

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## TERMS AND CONDITIONS

### 1. Termination of Contract for Cause

If through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenant, agreements or stipulations of this Contract, the County shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the County, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Consultant, and the County may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the County from the Consultant is determined.

### 2. Termination for Convenience of the County

The County may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the County as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.

### 3. Changes

The County may, from time to time, request changes in the scope of services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the County and the Consultant, shall be incorporated in written amendments to this Contract.

### 4. Personnel

- A. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the County.
- B. All of the services required hereunder will be performed by the Consultant or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior approval of the County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

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5. Assignability

The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County thereto: provided, however, that claims for money by the Consultant from the County under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County.

6. Reports and Information

The Consultant, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the County.

8. Copyrights and Patents

Any copyrightable work resulting from this Agreement is available to the author for such, but the County and the Illinois Department of Commerce and Economic Opportunity (DCEO) reserve the option for unlimited use and license to such work. Any discovery or invention shall be reported promptly to the County and DCEO for the determination as to whether patent protection should be sought and how the rights of any patent shall be disposed of and administered in order to protect the public interest.

9. Compliance with Local Laws

The Consultant shall comply with applicable laws, ordinances and codes of the State of Illinois and local governments.

10. Access to Records

The Consultant shall maintain accounts and project records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the County to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available to the County, DCEO, the U.S. Department of Housing and Urban Development, the U. S. Department of Labor, and the Comptroller General of the United States, or any of their duly authorized representatives. These parties shall have access to any books, documents, papers and records of the Consultant, which are directly pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions. All records shall be maintained for five years after project closeout.

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11. Title VI, Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. Age Discrimination

The Contractor shall comply with the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. No person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity funded in whole or in part with Federal funds.

14. Section 504

The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which extends the prohibitions against discrimination to individuals with disabilities.

15. Public Law 101-336, Americans with Disabilities Act of 1990

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

16. Conflict of Interest Clauses

Interest of Members of a County

No member of the governing body of the County and no other officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

Interests of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

### Interest of Consultant and Employees

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The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

### 17. "Section 3" Compliance

- A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work and purchase of services and supplies in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- C. The Consultant will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment training.
- D. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a *finding* that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

18. Equal Opportunity Clause (Contracts above \$10,000)

During the performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this non-discrimination clause.
- B. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- C. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- D. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the County's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

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- F. In the event of the Consultant's noncompliance with the non-compliance clause of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Consultant will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the County's Department of Housing and Community Development may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the County's Department of Housing and Community Development, the Consultant may request the United States to enter such litigation to protect the interests of the United States.