

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**

1. CONTRACT ID CODE PAGE OF PAGES  
1 3

2. AMENDMENT/MODIFICATION NO. 0005  
3. EFFECTIVE DATE 08/28/03  
4. REQUISITION/PURCHASE REQ. NO.  
5. PROJECT NO. (If applicable)

6. ISSUED BY CODE  
7. ADMINISTERED BY (If other than Item 6) CODE

U.S. Army Engineer District, Wilmington  
69 Darlington Avenue (28403)  
Post Office Box 1890 (28402-1890)  
Wilmington, North Carolina

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

(X) 9A. AMENDMENT OF SOLICITATION NO.

DACW54-02-B-0020

X 9B. DATED (SEE ITEM 11)

04/25/03

10A. MODIFICATION OF CONTRACT/ORDER NO.

10B. DATED (SEE ITEM 11)

CODE FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

- (a) By completing items 8 and 15, and returning 2 copies of the amendment;
- (b) By acknowledging receipt of this amendment on each copy of the offer submitted;
- or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

**E. IMPORTANT:** Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
IFB NO. DACA54-02-B-0020...Wilmington Harbor, NC 96 ACT Clean Sweep, Horseshoe Shoal Channel Sta 00+00 thru Baldhead Shoal Channel Sta 270+00 Dredging, New Hanover County, North Carolina is amended as follows:

See Attached SUMMARY OF CHANGES

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
15B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
15C. DATE SIGNED	16C. DATE SIGNED
(Signature of person authorized to sign)	(Signature of Contracting Officer)

**SECTION 00010 - 00800**

Delete existing Section 00010 - 000800 in their entirety and replace with enclosed revised Section 00010 - 00800.

**SECTION 01100 - SUPPLEMENTARY SPECIAL CONTRACT REQUIREMENTS**

- (1) Delete existing Table of Contents and SECTION in their entirety and replace with enclosed revised Table of Contents and SECTION.
- (2) Delete existing Attachment 1 Enclosure in its entirety and replace with enclosed revised Index of Drawings.

**SECTION 01355 - ENVIRONMENTAL PROTECTION**

- (1) Delete existing Table of Contents and SECTION in their entirety and replace with enclosed revised Table of Contents and SECTION.
- (2) Delete existing Attachment 3 Cover and Enclosure in their entirety.
- (3) Delete existing Attachment 4 Cover in its entirety and replace with enclosed revised Attachment 3 Cover.

**SECTION 02325 - DREDGING**

Delete existing Table of Contents and SECTION in their entirety and replace with enclosed revised Table of Contents and SECTION.

**NOTE:**

Text that is added or revised by this amendment is replaced in its entirety and printed in bold and/or stamped appropriately.

The text changes may have necessitated reformatting of subsequent text or pages. If this is the case, those pages have also been issued as amended pages but are not underlined with bold text.

**DRAWINGS:**

- (1) Delete the following drawings and replace with enclosed revised like-numbered drawings.

Plate Nos.: P-1, P-2, P-11, P-12 and P-37.

- (2) Delete Plate No. P-38 in its entirety.

(End of Summary of Changes)

Encls  
As stated

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. DACW54-02-B-0020-0005	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 25-Apr-2003	PAGE OF PAGES 1 OF 154
	<b>IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.</b>			

**IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.**

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. W81LJ8-2252-7512	6. PROJECT NO.
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7. ISSUED BY USAED, WILMINGTON -(910)251-4424 ATTN: DANNY R KISSAM P O BOX 1890 (28402-1890) 69 DARLINGTON AVE (28403) WILMINGTON NC 28402-1890  TEL:(910) 251-4424      FAX: (910) 251-4454	CODE DACW54	8. ADDRESS OFFER TO (If Other Than Item 7) CODE  <b>See Item 7</b>  TEL:      FAX:
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9. FOR INFORMATION CALL:	A. NAME DANNY R. KISSAM	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (910) 251-4424
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**SOLICITATION**

**NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".**

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

SPECIFICATIONS FOR DACW54-02-B-0020, CLEAN SWEEP, DREDGING, BALDHEAD SHOAL OUTER REACH (STA 260+00) THRU HORSESHOE SHOAL (STA 00+00), WILMINGTON HARBOR, NC-96 ACT

(ESTIMATED COST RANGE OF PROJECT IS MORE THAN \$10,000,000)

(UNRESTRICTED)

NOTE #1: RETURN SECTION 00600, REPRESENTATIONS & CERTIFICATIONS, ALONG WITH ALL OTHER INFORMATION REQUESTED IN SECTION 00100, CLAUSE 52.0000-4002, WITH BID SUBMITTAL.

NOTE #2: VERBAL OR WRITTEN REQUESTS FOR INFORMATION MUST BE DIRECTEDED TO THE PERSON LISTED IN BLOCK 9 ABOVE. INQUIRIES AND REQUESTS THAT ARE DIRECTED TO ANY OTHER PERSON MAY NOT BE RELAYED TO THE PROPER PERSON, AND THEREFORE, MAY NOT BE ANSWERED. SEE 52.000-4001 IN SECTION 00100.

NOTE #3: DUE TO INCREASED SECURITY, PLEASE ALLOW FOR DELAYS OF APPROXIMATELY 45 MINUTES FOR PERSONS AND MATERIALS ENTERING THE DISTRICT HEADQUARTERS BUILDING.

11. The Contractor shall begin performance within 10 calendar days and complete it within 135 calendar days after receiving  award,  notice to proceed. This performance period is  mandatory,  negotiable. (See \_\_\_\_\_.)

12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS  10
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 2 copies to perform the work required are due at the place specified in Item 8 by 02:00 PM (hour) local time 15 Sep 2003 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee  is,  is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

**SOLICITATION, OFFER, AND AWARD (Continued)**

*(Construction, Alteration, or Repair)*

**OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR <i>(Include ZIP Code)</i>		15. TELEPHONE NO. <i>(Include area code)</i>	
		16. REMITTANCE ADDRESS <i>(Include only if different than Item 14)</i>	
		<b>See Item 14</b>	
CODE	FACILITY CODE		

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS	SEE SCHEDULE OF PRICES
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18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

*(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)*

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>	20B. SIGNATURE	20C. OFFER DATE
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**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
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24. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>	<b>ITEM</b>	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)
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26. ADMINISTERED BY      CODE	27. PAYMENT WILL BE MADE BY:      CODE
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**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT <i>(Contractor is required to sign this document and return _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.	<input type="checkbox"/> 29. AWARD <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This award commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
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30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN <i>(Type or print)</i>	31A. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>	
30B. SIGNATURE	30C. DATE	TEL:      EMAIL:
		31B. UNITED STATES OF AMERICA BY
		31C. AWARD DATE

Section 00010 - Solicitation Contract Form

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	MOBILIZATION AND DEMOBILIZATION FFP PURCHASE REQUEST NUMBER: W81LJ8-2252-7512	1	Lump Sum		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	UNCLASSIFIED EXCAVATION FFP with disposal to Old Baldhead Shoal Alignment and/or Old ODMDS in accordance with the plans and specifications. All Quantities are Estimated. Quantities include required depth, allowable overdepth and anticipated shoaling in the contract area.	2,000,000	Cubic Yard		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	PERFORMANCE AND PAYMENT BONDS FFP	1	Cubic Yard		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004	OPTIONAL BID ITEM A FFP THIS IS NOT A BID ITEM.				

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AA	MOBILIZATION AND DEMOBILIZATION FFP	1	Lump Sum		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AB	UNCLASSIFIED EXCAVATION FFP with Disposal to be placed on designated Beach areas in accordance with the plans and specifications. All quantities are estimated. Quantities include required depth, allowable overdepth and anticipated shoaling in the contract area.	1,415,000	Cubic Yard		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AC	BEACH TILLING FFP In accordance with the plans and specifications.	35	Acre		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AD	PERFORMANCE AND PAYMENT BONDS FFP	1	Lump Sum		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005	OPTIONAL BID ITEM B FFP THIS IS NOT A BID ITEM.				

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005AA	MOBILIZATION AND DEMOBILIZATION FFP	1	Lump Sum		

---

NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005AB	UNCLASSIFIED EXCAVATION FFP with Disposal to be placed on designated Beach areas in accordance with the plans and specifications. All quantities are estimated. Quantities include required depth, allowable overdepth and anticipated shoaling in the contract area.	1,850,000	Cubic Yard		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005AC	BEACH TILLING FFP In accordance with the plans and specifications.	45	Acre		

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NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005AD	PERFORMANCE AND PAYMENT BONDS FFP	1	Lump Sum		

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NET AMT

FOB: Destination

TOTAL AMOUNT

TOTAL AMOUNT OF LINE ITEMS 0001-0003

\$ \_\_\_\_\_

**NOTICE TO ALL BIDDERS:**

**EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)**

The Government will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.

**NOTE 1:**

**THE GOVERNMENT RESERVES THE RIGHT TO EXERCISE OPTIONAL BID ITEM A WITHIN NINETY (90) CALENDAR DAYS AFTER DATE OF AWARD AND RESERVES THE RIGHT TO EXERCISE OPTIONAL BID ITEM B WITHIN FOUR HUNDRED AND TEN (410) CALENDAR DAYS AFTER DATE OF AWARD.**

**IT IS THE GOVERNMENT'S INTENTION TO AWARD EITHER OPTIONAL BID ITEM A OR OPTIONAL BID ITEM B, BUT NOT BOTH.**

**NOTE 2:**

**THE EXERCISE OF ANY OPTIONAL BID ITEM IS SUBJECT TO THE AVAILABILITY OF FUNDS.**

**NOTE 3:**

**ENVIRONMENTAL SCHEDULE FOR BEACH DISPOSAL UNDER OPTIONAL BID ITEMS A AND B.**

**ALL BEACH DISPOSAL AND PLACEMENT SHALL NOT BEGIN BEFORE 16 NOVEMBER AND SHALL BE COMPLETE TO INCLUDE REMOVAL OF ALL PIPE BY 30 APRIL.**

**USE OF HOPPER DREDGES**

**HOPPER DREDGES SHALL NOT BE USED IN PERFORMANCE OF WORK FOR THIS CONTRACT UNTIL 1 DECEMBER AND SHALL BE COMPLETE WITH ALL WORK BY 31 MARCH.**

**PRE-AWARD INFORMATION**

Contracts shall be awarded to responsible prospective contractor.

Before award, to be determined responsible, a prospective contractor must:

**THE FOLLOWING INFORMATION MUST BE SUBMITTED WITH BID**

- a. Have adequate financial resources to perform the contract, or the ability to obtain them;
- b. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments;
- c. Have a Satisfactory performance record;
- d. Have necessary, or be able to obtain necessary equipment to perform this work in accordance with specifications and time specified;
- e. Furnish a completed Small Business Subcontracting Plan (LARGE BUSINESS ONLY)

Section 00100 - Bidding Schedule/Instructions to Bidders

CLAUSES INCORPORATED BY FULL TEXT

**52.0000-4001 HANDCARRIED BIDS/PROPOSALS**

**If bids/proposals are handcarried, deliver them to the Contracting Office, 69 Darlington Avenue, Wilmington, North Carolina, 28403. All bids/proposals must be received in the Contracting Office not later than the exact time specified for bid opening or time specified for receipt of proposals.**

**(End)**

**52.0000-4011 OBTAINING INFORMATION REGARDING THIS SOLICITATION  
(CESAW-CT Local Instruction)**

**Read this paragraph in conjunction with FAR 52.214-6, Explanation To Prospective Bidders, which is located in this Section 00100. Written requests for explanations must be sent to the person identified in item 9 of the SF 1442 and may be sent via facsimile to 910-251-4454. Inquiries and requests that are directed to any other person may not be relayed to the proper person and, therefore, may not be answered.**

**(End)**

**52.0000-4028 INFORMATION TO ALL CONTRACTORS  
Central Contractor Registration (CCR) and  
Electronic Funds Transfer (EFT)  
(CESAW-CT Local Instruction)**

**\*\*\*\*\* I M P O R T A N T \*\*\*\*\***

- 1. All contractors MUST REGISTER in the Central Contractor Registration (CCR) database BEFORE THEY CAN BE AWARDED A CONTRACT. You may register through the CCR website at <http://www.ccr.gov>. A CCR registration form is also available from the DoD Electronic Commerce Information Center at 1-888-227-2423.**
- 2. a. Public Law 104-134 requires the use of Electronic Funds Transfer (EFT) for all Federal payments, starting 2 January 1999. Although EFT data is now being obtained through the CCR, the interface between the CCR and the U. S. Army Corps of Engineers (USACE) payment office in Millington, TN is not currently available. Therefore, the U. S. Army Corps of Engineers Finance Center is now offering EFT payments directly to vendors.**
  - b. For USACE contract awards, you must be enrolled in the EFT program at the USACE FINANCE CENTER, Millington, TN.**
  - c. After a contract award with the Wilmington District, and once EFT is established, payments will be directly deposited into your checking or savings account avoiding mail delays and a six week delay for replacement of lost checks.**

**d. A Direct Deposit Authorization Form (UFC-DISB-4) and instructions are available from our Resource Management Office for completing and mailing the form. Please make a copy for your records and for your bank.**

**e. MAIL COMPLETED FORM TO:**

**USACE FINANCE CENTER  
ATTN: EFT/DISBURSING  
5720 INTEGRITY DRIVE  
MILLINGTON, TN 38054-5005**

**f. Contact the Wilmington District Resource Management Office, Ms. Marjorie Ahlquist at 910/251-4474 for questions/forms concerning EFT.**

**g. See contract clause 52.0232-0034 "Payment By Electronic Funds Transfer - Other Than Central Contractor Registration (May 1999)" and contract clause 52.0232-0035 "Designation of Office for Government Receipt of Electronic Funds Transfer Information (May 1999).**

**(End)**

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@dnb.com](mailto:globalinfo@dnb.com).

(End of provision)

**52.0204-4001 CONTRACTOR'S SIGNATURE (FAR 4.102(a))  
(CESAW-CT Local Note to Offeror)**

**(a) INDIVIDUALS.**

A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as...".

**(b) PARTNERSHIPS.**

A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the contracting officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

**(c) CORPORATIONS.**

A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

**(d) JOINT VENTURERS.**

A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. When a corporation is participating, the contracting officer shall obtain from the corporation a certificate stating that the corporation is authorized to participate in the joint venture.

**(e) AGENTS.**

When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) above, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

(End)

**52.0209-4002 PRE-AWARD INFORMATION  
(CESAW-CT LOCAL INSTRUCTION)**

Contracts shall be awarded to responsible prospective contractors only. Before award, to be determined responsible, a prospective contractor must

- a. Have adequate financial resources to perform the contract, or the ability to obtain them;
- b. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments;
- c. Have a satisfactory performance record;

- d. Have a satisfactory record of integrity and business ethics;**
- e. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;**
- f. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and**
- g. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.**

**Each bidder shall, upon request of the Contracting Officer, furnish information on any or all of the above areas so that the Contracting Officer can make an affirmative determination of responsibility or nonresponsibility.**

**(End)**

52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214-5 SUBMISSION OF BIDS (MAR 1997)

- (a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.
- (b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

#### 52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

#### 52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

#### 52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

#### 52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

**52.214-4002 CONDITIONS GOVERNING EVALUATION OF BIDS AND AWARD OF CONTRACT**  
**(CESAW-CT Local Note to Offeror)**

**(a) If a modification to a bid is submitted, which provides for a lump-sum adjustment to the total estimated cost, the application of the lump-sum adjustment to each unit price and/or lump-sum item, in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump-sum adjustment shall be applied on a pro rata basis to every unit price and/or lump-sum item in the BIDDING SCHEDULE.**

**(b) Telegrams (if any) changing bid figures should be confirmed in writing immediately, and be signed by a responsible officer of the organization.**

**(c) Failure to complete all Solicitation/Certifications may result in rejection of the bid.**

**(d) Bids which are QUALIFIED by the bidder may be considered NONRESPONSIVE.**

**(End)**

**52.0214-5000 APPARENT CLERICAL MISTAKES**  
**(CESAW-CT Local Instruction)**

**"Arithmetic Discrepancies**

**(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of bidding schedule as submitted by the bidder:**

**(1) Obviously misplaced decimal points will be corrected;**

**(2) Discrepancy between unit price and extended price, the unit price will govern;**

**(3) Apparent errors in extension of unit prices will be corrected;**

**(4) Apparent errors in addition of lump-sum and extended prices will be corrected.**

**(b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids."**

**(c) These correction procedures shall not be used to resolve any ambiguity concerning which bid is low.**

#### 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm fixed price contract, with options, resulting from this solicitation.

(End of clause)

#### 52.217-3 EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.

(End of provision)

#### 52.0219-4002 SUBCONTRACTING PLAN GOALS

**The offeror's attention is directed to the SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN clause of this solicitation. The clause and this paragraph do not apply to small business concerns.**

**(a) Where applicable, the offeror shall submit a subcontracting plan to the Contracting Officer for review and approval prior to contract award. The subcontracting plan may be submitted with the bid/offer or after the date set for receipt of offers. If the plan is not submitted with the bid/offer, the Contracting Officer will request the plan and specify the due date. The plan must contain all required elements set forth in the above referenced contract clause; must address basic contract requirements and options separately; and must demonstrate how he contractor will accomplish the contracting requirements consistent with the obligations described in the clause. The plan will be evaluated in accordance with AFARS Appendix DD, Subcontracting Plan Evaluation Guide. (The guide is available on the worldwide web at**

<http://farsite.hill.af.mil/reghtml/regs/other/afars/APDD.htm>.) Acceptability of the plan will be one of the elements considered by the Contracting Officer when determining contractor responsibility prior to award of a contract.

(b) The following subcontracting goals have been assigned to the Wilmington District and are the minimum acceptable goals for subcontracting plans incorporated into the district's contracts:

- |   |        |
|---|--------|
| (1) Small Business Concerns               | 57.2%  |
| (2) Small Disadvantaged Business Concerns | 8.9%   |
| (3) Women Owned Small Business Concerns   | 8.1%   |
| (4) Service Connected Disabled Veterans   | 3%     |
| (5) HUBZone Small Business                | 3%     |
| (6) Reporting by Large Business           | 100.0% |

Stated percentages are based on the total amount of planned subcontracting. These goals do not apply to contracts for commercial items. See FAR Part 12. For definitions of small business concern, small disadvantaged business concern, and women owned small business concern, see the Small Business Program Representations (FAR 52.219.1) provision in Section K of the solicitation.

(c) After award of the contract and prior to commencement of work, the Deputy of Small Business will instruct the Contractor in the preparation and timely submission of required subcontracting reports (SF-294 and SF-295). Where practicable, the above briefing will take place during the pre-work conference.

(d) Additional information concerning subcontracting plan requirements may be obtained from Ms. Sherry Gaylor, Deputy for Small Business, Phone: 910/251-4419.

(End)

#### 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
20.7	6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Baldhead Shoal Outer Reach thru Horseshoe Shoal, Wilmington Harbor, Brunswick County, North Carolina.

#### 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT--CONSTRUCTION MATERIALS (MAY 2002)

(a) Definitions. Construction material, domestic construction material, and foreign construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act --Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

#### 52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be 20% percent of the bid price or \$3,000,000.00, whichever is less.-

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.-

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

#### 52.232-38 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement

to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.
- (7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

#### 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from USAED, WILMINGTON, (ATTN: CONTRACTING DIVISION) PO BOX 1890, WILMINGTON, NC 28402-1890.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

#### 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: Jim Mullins

Address: Seamen's Center Building, 2220 Barnett Boulevard, Wilmington, NC 28402

Telephone: 910-815-0692

**52.0236-4001 HARBOR MAINTENANCE FEE (Dec 87) (EAL 88-1)  
(CESAW-CT Local Note to Offeror)**

**Offerors or bidders contemplating use of US ports in the performance of contract work are subject to paying a harbor maintenance fee as authorized under Section 1402 of the Water Resource Development Act of 1986 (Public Law 99-662). The fee imposed by the act is equal to a percentage (as set forth by the Act and amendments thereto) of the value of the commercial cargo involved. Firms performing work under US Government contracts are not exempt from the act. Offerors and bidders are responsible for ensuring the applicable fee and associated cost are taken in the preparation of their offer or bid. Information pertaining to the act and list of US ports which subjects the cargo to the harbor maintenance fee may be obtained from local US Customs Service Offices or by writing to the Director, User Fee Task Force, Division of Inspection and Control, Room 4132, U. S. Customs Service 1301 Constitution Avenue, N.W., Washington, DC 20229.**

252.204-7001 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter ``CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will--

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

#### 252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP 1994)

(a) Definitions. As used in this provision--

(1) "Entity controlled by a foreign government" means--

(i) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(ii) Any individual acting on behalf of a foreign government.

(2) "Effectively owned or controlled" means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of the Offeror's officers, directors, partners, regents, trustees, or a majority of the Offeror's board of directors by means, e.g., ownership, contract, or operation of law.

(3) "Foreign government" means any governing body organized and existing under the laws of any country other than the United States and its possessions and trust territories and any agent or instrumentality of that government.

(4) "Proscribed information" means--

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone unites (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmental Information (SCI).

(b) Prohibition on award. No contract under a national security program may be awarded to a company owned by an entity controlled by a foreign government if that company requires access to proscribed information to perform the contract, unless the Secretary of Defense or designee has waived application of 10 U.S.C.2536(a).

(c) Disclosure.

The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Name and Address of Offeror

Name and Address of Entity

Description of Interest, Controlled by a Foreign  
Ownership Percentage, and

Government Identification of Foreign Government

(End of provision)

252.236-7008 CONTRACT PRICES - BIDDING SCHEDULES. (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for --

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

Section 00600 - Representations & Certifications

CLAUSES INCORPORATED BY FULL TEXT

**52.0000-4036 PLANT AND EQUIPMENT SCHEDULE**

**PLANT AND EQUIPMENT SCHEDULE**

**Available Plant to be Used**

---

No.	Type	Capacity	Manufacturer	Age and Condition	Location

---

**NOTES: THE BIDDER SHALL INSERT THE FOLLOWING INFORMATION UNDER THE APPROPRIATE HEADING, USING A SEPARATE LINE FOR EACH MAJOR ITEM AND AN ADDITIONAL PAGE IF NECESSARY.**

- a. **Number.** For dredges give identifying number and name.
- b. **Type.** Under this heading give description as follows: For bucket and dipper dredges show bucket capacity in cubic yards, horsepower of hoist engine, type of power, and number of swings per hour; for pipeline dredges show inside diameter of discharge pipe, horsepower of pump engine, and type of power.
- c. **Capacity.** Under this heading, state the estimated capacity of the plant in cubic yards per month when working materials similar to those which it is anticipated will be encountered in the performance of the work.
- d. The listing of plant herein is not to be construed as an agreement on the part of the Government that it is adequate for performance of the work.

The following statement will be executed by all bidders: The plant 1/(will, will not) have the facilities for furnishing the meals required by paragraph entitled "Accommodations and Meals for Inspectors" of the Special Clauses of the specifications.

1/Delete inapplicable provision.

(End)

52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contradictory to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above  
\_\_\_\_\_ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of

this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

#### 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

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

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

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

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

(d) Taxpayer Identification Number (TIN).

\_\_\_ TIN:-----

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

\_\_\_ Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

\_\_\_ Corporate entity (tax-exempt);

\_\_\_ Government entity (Federal, State, or local);

\_\_\_ Foreign government;

\_\_\_ International organization per 26 CFR 1.6049-4;

\_\_\_ Other-----

(f) Common parent.

\_\_\_ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

\_\_\_ Name and TIN of common parent:

Name-----

TIN-----

(End of provision)

52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

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

owned by one or more women; and whose management and daily business operations are controlled by one or more women.

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

(End of provision)

**52.0204-4002 CERTIFICATE OF AUTHORITY TO BIND CORPORATION  
(CESAW-CT Local Instruction Clause)**

**Offeror, if a corporation, shall cause the following certificate to be executed under its corporate seal. The same officer shall not sign both the offer and this certificate.**

**CERTIFICATE**

I, \_\_\_\_\_  
(Name) (Title)

of the corporation named as Offeror herein, certify that \_\_\_\_\_,  
(Name of person who signed offer)

who signed this offer on behalf of the corporation, was then \_\_\_\_\_ of said corporation, and that said offeror was  
(Offeror) duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
(Signature)  
(CORPORATE SEAL)

\_\_\_\_\_  
(Typed Name)

(End)

**52.0204-4003 CERTIFICATE OF AUTHORITY TO BIND PARTNERSHIP  
(CESAW-CT Local Instruction)**

**The offeror, if a partnership, shall cause the following certificate to be executed. All partners must sign this certification.**

**CERTIFICATE**

**We, the undersigned, comprising the total membership of \_\_\_\_\_  
 \_\_\_\_\_, as partnership doing business at \_\_\_\_\_  
 \_\_\_\_\_, do hereby certify that \_\_\_\_\_ is  
 \_\_\_\_\_ of said partnership and is empowered to  
 represent, bind, and execute contracts on behalf of said partnership.  
 Witness our signatures, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.**

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

**WITNESSES:**

\_\_\_\_\_

(Address)

\_\_\_\_\_

(Address)

**(End)**

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

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

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

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

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

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

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

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

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

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

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

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

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

(End of provision)

52.214-14 PLACE OF PERFORMANCE--SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, [ ] intends, [ ] does not intend [check applicable box] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks "intends" in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance	Name and Address of Owner
(Street, Address, City, and Operator of the Plant or County, State, Zip Code)	Facility if Other than Bidder

_____	_____
_____	_____
_____	_____
_____	_____

(End of provision)

52.214-16 MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of Sixty (60) calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: \_\_\_\_\_ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

(End of clause)

#### 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002) - ALTERNATE I (APR 2002)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 237990.

(2) The small business size standard is \$17,500,00.00.

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

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

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

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

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

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

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material

change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

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

(7) (Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.) The offeror shall check the category in which its ownership falls:

\_\_\_\_ Black American.

\_\_\_\_ Hispanic American.

\_\_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

\_\_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

\_\_\_\_ Individual/concern, other than one of the preceding.

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

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

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

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

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

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

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

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

"Women-owned small business concern," means a small business concern --

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

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

(d) Notice.

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

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

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

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

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

(End of provision)

52.219-2 EQUAL LOW BIDS. (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.] The Offeror [ ] is, [ ] is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees    Avg. Annual Gross Revenues

\_\_\_ 50 or fewer    \_\_\_ \$1 million or less

\_\_\_ 51 - 100    \_\_\_ \$1,000,001 - \$2 million

\_\_\_ 101 - 250    \_\_\_ \$2,000,001 - \$3.5 million

\_\_\_ 251 - 500    \_\_\_ \$3,500,001 - \$5 million

\_\_\_ 501 - 750    \_\_\_ \$5,000,001 - \$10 million

\_\_\_ 751 - 1,000    \_\_\_ \$10,000,001 - \$17 million

\_\_\_ Over 1,000    \_\_\_ Over \$17 million

(End of provision)

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

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

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

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will

be obtained before subcontract awards.

(End of provision)

52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

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

(End of provision)

52.223-4 RECOVERED MATERIAL CERTIFICATION (OCT 1997)

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

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

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

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

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

(i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

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

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

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

\_\_\_\_ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

## Section 00700 - Contract Clauses

## CLAUSES INCORPORATED BY FULL TEXT

## 52.202-1 DEFINITIONS. (DEC 2001)

- (a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.
- (b) Commercial component means any component that is a commercial item.
- (c) Commercial item means--
- (1) Any item, other than real property, that is of a type customarily used by the public or by non-governmental entities for purposes other than governmental purposes, and that--
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
    - (i) Modifications of a type customarily available in the commercial marketplace; or
    - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if--
    - (i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
    - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
  - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

#### 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

#### 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

#### 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

#### 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY  
(JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This

term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the

engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

#### 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause--

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as--

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and

cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

52.214-26 AUDIT AND RECORDS--SEALED BIDDING. (OCT 1997)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall

have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) the actual subcontract; or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made:

(1) the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (d)(2)(ii) of this clause:

(i) an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

52.214-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall:

(1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403-4(a)(1); and

(2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.406-2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except-

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

\_\_\_ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

#### 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

Definitions. As used in this contract--

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

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

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

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

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

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

Women-owned small business concern means a small business concern--

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

#### 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2001)

- (a) This clause does not apply to small business concerns.
- (b) Definitions. As used in this clause--

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated)

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether HUBZone small business concerns were solicited and, if not, why not;

(D) Whether small disadvantaged business concerns were solicited and, if not, why not;

(E) Whether women-owned small business concerns were solicited and, if not, why not; and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owner small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owner small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

#### 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

#### 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the

Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

#### 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

#### 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
  - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (SEP 2000)

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) Payrolls and basic records.
  - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section

1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

## 52.222-11 SUBCONTRACTS (LABOR STANDARDS (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

## 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

## 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

## 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

## 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

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

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

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

(End of clause)

## 52.222-26 EQUAL OPPORTUNITY (APR 2002)

- (a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as

otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

#### 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan

area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried

out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Definitions. As used in this clause--

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee--

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly

established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means--

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

#### 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans" Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date--

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that--

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.
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(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

#### 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

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## 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

#### 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

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

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

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

#### 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAY 2002)

(a) Definitions. As used in this clause--

Component means an article, material, or supply incorporated directly into a construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic construction material means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:  
none

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) \1\
<b>Item 1</b>			
Foreign construction material....	.....	.....	.....
Domestic construction material...	.....	.....	.....
<b>Item 2</b>			
Foreign construction material....	.....	.....	.....
Domestic construction material...	.....	.....	.....

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

## 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

## 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitute not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an

interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

#### 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

## 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

## 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

## 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

- (1) Pledge of assets; and
- (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

- (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

#### 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS. (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

#### 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of

non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of less than \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of less than \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

-----  
 [Issuing Financial Institution's Letterhead or Name and Address]

Issue Date \_\_\_\_\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_(for reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$\_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at

the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_ [Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$\_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at

\_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

\_\_\_\_\_

[City, State]

(Date) \_\_\_\_\_

[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Beneficiary Agency] \_\_\_\_\_ the sum of United States \$\_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit No.

\_\_\_\_\_.

\_\_\_\_\_

[Beneficiary Agency]

By: \_\_\_\_\_

(End of clause)

## 52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JUL 2000)-

## (a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

## 52.229-2 NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form: I hereby certify that during the period . . . to . . . [insert dates], . . . [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating \$ . . . (State) and \$ . . . (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by . . . [insert name of Contractor or subcontractor] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

#### 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

(a) As used in this clause--

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

#### 52.232-16 PROGRESS PAYMENTS (APR 2003)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts. (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors--

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless--

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for --

(A) completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor

(ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(b) Liquidation. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension. The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).
  - (2) Performance of this contract is endangered by the Contractor's
    - (i) failure to make progress or
    - (ii) unsatisfactory financial condition.
  - (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
  - (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
  - (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
  - (6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.
- (d) Title.
- (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.
  - (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.
    - (i) Parts, materials, inventories, and work in process;
    - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
    - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and
    - (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.
  - (3) Although title to property is in the Government under this clause, other applicable clauses of this contract; e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
  - (4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.
  - (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) Control of costs and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports and access to records. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) Special terms regarding default. If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights. (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) Financing payments to subcontractors. The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to--

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments--

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments--

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments--

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in Subpart 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) Limitations on undefinitized contract actions. Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) Due date. The designated payment office will make progress payments on the 14th (Contracting Officer insert date as prescribed by agency head; if not prescribed, insert "30th") day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) Progress payments under indefinite--delivery contracts. The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

#### 52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple

interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

#### 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

#### 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes

such action in writing.

#### 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (FEB 2002)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If

the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to use:

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

- (i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and
- (ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.
- (e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--
- (1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;
- (2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;
- (3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;
- (4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--
- (i) Make such payment within--
- (A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or
- (B) Seven days after the Contractor recovers such funds from the Government; or
- (ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;
- (5) Notice to Contracting Officer. Notify the Contracting Officer upon--
- (i) Reduction of the amount of any subsequent certified application for payment; or
- (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--
- (A) The amounts withheld under paragraph (e)(1) of this clause; and
- (B) The dates that such withholding began and ended; and
- (6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--
- (i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be

construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(1) Overpayments. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

#### 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER—OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) Mandatory submission of Contractor's EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by no later than 15 days prior to submission of first request for payment. (the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or "concurrent with first request" as prescribed by the head of the agency; if not prescribed, insert "no later than 15 days prior to submission of the first request for payment"). If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a

single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The Contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
- (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (MAY 1999)

- (a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.
- (b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

USACE FINANCE CENTER  
ATTN: EFT/DISBURSING  
5722 INTEGRITY DRIVE  
MILLINGTON TN 38054-5005

901-874-8543

MR MICHAEL RYE

(End of clause)

52.233-1 DISPUTES. (JUL 2002)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -
- (A) Exceeding \$100,000; or
- (B) Regardless of the amount claimed, when using -
- (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
- (2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer

receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

#### 52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the

Contractor and the Government.

52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least **FORTY (40)** percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

#### 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

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

#### 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to

the Contracting Officer and has authority to act for the Contractor.

#### 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

#### 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

#### 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

## 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

## 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## 52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

## 52.236-13 ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)

- (a) The Contractor shall provide and maintain work environments and procedures which will
- (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
  - (2) avoid interruptions of Government operations and delays in project completion dates; and
  - (3) control costs in the performance of this contract.
- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-
- (1) Provide appropriate safety barricades, signs, and signal lights;
  - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- (c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.
- (f) Before commencing the work, the Contractor shall-
- (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
  - (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

## 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed 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 determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

## 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

## 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in

both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

#### 52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time,

and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

#### 52.242-13 BANKRUPTCY. (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### 52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

#### 52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating
- (1) the date, circumstances, and source of the order and
  - (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after
- (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

#### 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Government inspections and tests are for the sole benefit of the Government and do not--

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. - FLAG COMMERCIAL VESSELS (JUN 2000)

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are--

- (1) Acquired for a U.S. Government agency account;
  - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer, and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) Sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.
  - (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet if available.
  - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to--
- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
  - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

(End of clause)

#### 52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering-- Construction clause of contract . . . . ., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

#### 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer

determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

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

#### 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause

entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

#### 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es)

<http://www.arnet.gov/far>

<http://farsite.hil.af.mil>

<http://www.dtic.mil/fars>

(End)

#### 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

#### 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

- (a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.
- (b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) *Definitions.* As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

#### 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

#### 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(NOV 2001)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.

(End of clause)

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institutions*, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

- (1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and
- (2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employees has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2..1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

#### 252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

#### 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

## 252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

- (a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.
- (b) The price breakdown --
  - (1) Must include sufficient detail to permit an analysis of profit, and of all costs for --
    - (i) Material;
    - (ii) Labor;
    - (iii) Equipment;
    - (iv) Subcontracts; and
    - (v) Overhead; and
  - (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.
- (c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (d) The Contractor's proposal shall include a justification for any time extension proposed.

## 252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)

- (a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.
- (b) The Contractor shall--
  - (1) Check all drawings furnished immediately upon receipt;
  - (2) Compare all drawings and verify the figures before laying out the work;
  - (3) Promptly notify the Contracting Officer of any discrepancies;
  - (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
  - (5) Reproduce and print contract drawings and specifications as needed.
- (c) In general--
  - (1) Large-scale drawings shall govern small-scale drawings; and
  - (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
-------	------	-------------

(End of clause)

252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS. (DEC 1991)

(a) The Contractor shall --

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may --

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et. seq.).

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

-----  
(Official's Name)

-----  
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

- (3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.
- (4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.
- (5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract. However, effective May 1, 1996, the term does not include a supplier, materialman, distributor, or vendor of commercial items or commercial components.
- (6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.
- (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.
- (ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.
- (7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.
- (b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --
- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.
- (c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --
- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief --

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
-----	-----	-----
-----	-----	-----
-----	-----	-----
TOTAL	-----	-----

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is

entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the small purchase limitation of section 13.000 of the Federal Acquisition Regulation.

#### 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

## Section 00800 - Special Contract Requirements

## CLAUSES INCORPORATED BY FULL TEXT

## 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, (c) complete the entire work ready for use not later than **One Hundred Thirty Five (135)** calendar days, after the date the Contractor receives the notice to proceed. The time stated for completion shall include final cleanup of the premises.

(End of clause)

## 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of **One Thousand One Hundred and Twenty Dollars (\$1,120.00)** for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

## 52.211-13 TIME EXTENSIONS (SEP 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

## 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the

contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

**52.0228-4014 KINDS AND AMOUNTS OF INSURANCE REQUIRED:  
(CESAW-CT Local Instruction)**

(1) **Worker's Compensation and Employer's Liability.** In the amount required by law of the state in which work is to be performed under this contract or at least \$100,000.

(2) **General Liability.** Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(3) **Automobile Liability.** At least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage, or a combined single limit of \$500,000.

(End)

**52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)--EFARS**

(a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region III. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

**(End)**

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

-----  
(Name)

-----  
(Title)

-----  
(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

#### **52.232-5001 CONTINUING CONTRACTS (MAR 1995)--EFARS**

**(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations, and from future contribution to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.**

**(b) The sum of \$1,000.00 has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.**

**(c) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (f) and (i) below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore.**

**(d) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification**

to the contract.

(e) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(f) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(g) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

(h) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(i) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

(j) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

(End)

52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations and hydrographic surveys.

(b) Weather conditions. Weather conditions are reported by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) Environmental Data Service, Asheville, North Carolina and information about weather condition(s) is available through the following Internet site:

<http://www.nxdc.com/weather/>

(c) Transportation facilities. U.S. Highway 17, 74, 76 and 421 as well as North Carolina Highways 133 and 87 and Interstate 40, in the area of Wilmington, North Carolina, which is served by first class and secondary roads, rail, air and deep water facilities. The work area includes a portion of the Atlantic Intracoastal Waterway, and extends from the Atlantic Ocean up the Cape Fear River to the Sunny Point Area.

(d) Local Tidal Conditions. Information about local tidal conditions is available through the following Internet site:

<http://www.co-ops.nos.noaa.gov/tp4days.html>

(e) Location: The project is located within Brunswick County and New Hanover County in Southeastern North Carolina near the mouth of the Cape Fear River.

(f) Channel Traffic: Temporary cessation of operations may be necessary for the passage of large ocean-going vessels, large fishing vessels, tugs with barges in tow and small vessel traffic.

(g) Subsurface Investigations.

(1) Drilling logs of borings are provided in Appendix A. Soils laboratory data is provided in Appendix B. All data is provided for information only.

(2) Subsurface conditions indicated on drawings and specifications are the result of site investigations by hydrographic and geophysical methods, splitspoon, rock core, and wash probe borings. Boring locations are shown on the drawings. Elevations on boring logs are referenced to Mean Lower Low Water (MLLW) or Mean Low Water (MLW). River channel elevations on boring logs may vary from hydrographic soundings on drawings, because there are seasonal changes in channel bottom elevations and local changes attributable to maintenance dredging. Descriptions of the subsurface are representations of the soil and/or rock specimens at the respective locations and elevations of the borings.

(3) Expert technical judgment is required to extrapolate and project subsurface conditions from a particular boring location. The description of geologic and engineering characteristics may change or vary with distance away from the boring.

(4) When viewing subsurface investigation data provided in these specifications, the Contractor shall recognize the limitations inherent in extrapolating and projecting subsurface conditions from a boring location, methods of subsurface investigation, classification systems and evaluation procedures used to describe the subsurface materials. A generalized view of the subsurface condition is obtainable through analyses of the subsurface investigation data. In view of the geomorphological development of the area and civil development of the harbor, conditions not disclosed by borings may be encountered during the work. These conditions may range from and include lenses of well-cemented rock with high unconfined compressive strengths to very low strength or even flowing sediments. Other conditions may include highly organic material or trees and stumps buried in the geologic past, large slabs or boulders of rock from previous blasting, Civil War ordnance, sunken ships, and other miscellaneous discarded items.

(h) Condition of Channel: Controlling low water depths, at the time of the most recent survey, are shown on the maps referred to in paragraph, CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (DEC 1991). Historical survey data indicates that because of rapid shoaling, channel depths are subject to significant, unpredictable change in relatively short periods of time. Historical survey data is available for inspection upon request.

**52.236-16 QUANTITY SURVEYS (APR 1984)**

- (a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.
- (b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.
- (c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

**52.236-17 LAYOUT OF WORK (APR 1984)**

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

**52.0236-4002 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE  
(CESAW-CT Local Note to Offeror)**

**Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of Special Clause entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)." A copy of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule", is available for review in Room 400D, 69**

Darlington Avenue, Wilmington District, Corps of Engineers, Wilmington, NC. Volumes 1-12 of this pamphlet are available in Portable Document Format (PDF) and can be viewed or downloaded at <http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/cecw.htm>. Copies of the pamphlet are also available on CD-ROM (Volumes 1-12) through the Superintendent of Documents or government bookstores (see Appendix A). For additional information, telephone 202-512-1800, fax 202-512-2250, or access on the Internet at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

(End)

**52.0236-4013 SAFETY PUBLICATIONS**  
(CESAW-CT Local Note to Offeror)

1. The U. S. Army of the Corps of Engineers Safety Manual, EM 385-1-1, dated 3 September 1996, is applicable to work to be performed under this contract. The manual may be obtained without charge by applicants considered to be properly interested upon separate request to the Contracting Division issuing this solicitation.
  
- 52 Changes made between publication of new editions to the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, will be posted on the Headquarters Website. The date that it is posted will become the official effective date of the change and contracts awarded after this date shall be required to comply accordingly. The website location where these changes can be found is under the button entitled, "Changes to EM," located at: [www.hq.usace.army.mil/soh/hqusace\\_soh.htm](http://www.hq.usace.army.mil/soh/hqusace_soh.htm).

(End)

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
  
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.
  
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--
  - (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

## **52.0249-5000 BASIS FOR SETTLEMENT OF PROPOSALS**

**Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:**

**53 Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.**

**54 If equipment costs have been allocated to a contract using predetermined rates those charges will be adjusted to actual costs.**

**(3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.**

**(4) Ownership costs (depreciation) will be determined using the contractor's**

**depreciation schedule (subject to the provisions of FAR 31.205-11).**

**(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.**

**(End)**

252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION. (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) SIXTY (60%) percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining FORTY (40%) percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of --

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

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SECTION 01100

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## SECTION 01100

## SUPPLEMENTARY SPECIAL CONTRACT REQUIREMENTS

## PART 1 GENERAL

## 1.1 REFERENCES

The publication listed below forms a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

## U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

33 CFR 62.31	Special Marks
33 CFR 62.35	Mooring Buoys
33 CFR 84.11	Discrimination Prohibited
33 CFR 84.13	Employment Criteria
33 CFR 88.13	Lights on Moored Barges
33 CFR 88.15	Lights on Dredge Pipelines
33 CFR 156.118	Advance Notice of Transfer
33 CFR 173.21	Vessel Documentation
46 CFR 15.910	Uninspected Towing Vessels
46 CR4 15.815	Radar Observers

## U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1	(1996) Safety and Health Requirements Manual
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## NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT)

NCDOT	Standard Specifications For Roads And Structures, English, July 1995
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## NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH)

NIOSH Pub No. 85-115	(1985) Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities
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## 1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-06 Test Reports

List of Subcontractors; FIO

Progress Chart; G

Quality Control Plan; G

Within 24 hours of conclusion of physical tests, 5 copies of test results including calibration curves and results of calibration tests.

SD-07 Certificates

Certificate of Insurance; FIO

Completion of Corps CQC Course; FIO

Letter Appointing Superintendent; FIO

Qualifications of the commercial testing laboratory or Contractor's testing facilities; G.

1.3 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER  
ER 415-1-15 dtd 31 OCT 89

(a) This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract clause entitled "DEFAULT (Fixed Price Construction)". In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

(1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

(2) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

(b) The following schedule of monthly anticipated adverse weather delays is based on wave information, including wave height, period and direction over a 20 year hindcast period (1976-1995) presented in Technical Report CHL-99-18, dated September 1999, entitled, "Wave Climate and Littoral Sediment Transport Potential, Cape Fear River Entrance and Smith Island to Ocean Isle Beach, North Carolina", by Edward F. Thompson, Lihwa Lin, and Dlyle L. Jones, US Army Corps of Engineers, Engineering Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180-6199. The wave height between 4 and 5 feet will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(5)	(6)	(8)	(6)	(4)	(4)	(3)	(3)	(4)	(3)	(5)	(6)

(c) Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled work day.

(d) The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph b, above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)".

#### 1.4 U.S. COAST GUARD REQUIREMENTS - DREDGING OPERATIONS

(a) The Contractor shall provide lights and dayshapes on all vessels, plant, and pipeline dredges in accordance with 33 CFR 88.13, 88.15. The following specific maritime regulations shall be adhered to during the execution of this contract:

- (1) Lights on dredge pipelines (33 CFR 88.15)
- (2) Lights on barges at a bank or dock (33 CFR 88.13)
- (3) Lights and Shapes (33 CFR 84.11-13)
- (4) Mooring Buoys (33 CFR 62.35)
- (5) Special Marks (33 CFR 62.31)
- (6) Uninspected Towing Vessel's (UTV) Licensing Requirements (46 CFR 15.910 and 15.815)
- (7) UTV Drug Testing Requirement (46 CFR 4.06 and 4.03.02)
- (8) UTV Drug Marine Radar Requirement (33 CFR 164.01 (b) and 164.72)
- (9) UTV Certificate of Documentation (33 CFR 173.21)
- (10) UTV Marine Casualty Reporting Criteria (46 CFR 4.05-1)
- (11) Dredge or UTV Advance Notice of Transfers (33 CFR 156.118)

(b) The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and the Coast Guard governing lights and day signals to be displayed by towing vessels, tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipes or vessels involved in submarine or bank protection operations. The Contractor must also be in accordance with those regulations governing lights to be displayed on dredge pipeline and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel and the passing by other vessels of floating plant working navigable channels, as approved by the Secretary of the Army and

Commandant, U.S. Coast Guard. (33 C.F.R. 80.18 - 80.31a; 33 C.F.R. 95.51 - 95.66; 33 C.F.R. 9.22 - 90.36; 33 C.F.R. 82 and C.G. Pub. M-16672.2B, Navigation Rules, International -Inland (latest version))

#### 1.5 PERFORMANCE AND PAYMENT BONDS

Each bidder shall include his premiums for performance and payment bonds under item, "Performance and Payment Bonds" of the Bidding Schedule. Payment to the Contractor therefore, shall not exceed the bid price and shall be made in accordance with the Contract Clause entitled "PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS." Any additional amount bid in excess of the actual bond premium will be included in the final pay estimate for this contract.

#### 1.6 WATER CONSERVATION

Water is one of our valuable natural resources. Accordingly, the Contractor shall be judicious in its use in the performance of the work as specified. Water needed for compaction of roadway and/or foundation materials, and dust control shall be obtained from uncontrolled stream flow instead of potable supply sources to the extent available and suitable as determined by the Contracting Officer.

#### 1.7 FINAL EXAMINATION AND ACCEPTANCE

As soon as practicable after the completion of the entire work or, if the work is divided into sections, or if any section which in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. If any shoals, lumps, or the lack of contract depth are disclosed by this examination, the Contractor shall remove same by dredging the bottom with payment at the contract rate for dredging. The Contractor is only allowed to do dragging operations in lieu of dredging if approved by the Contractor Officer. The Contractor will be notified when soundings or sweepings are to be made and will be permitted to accompany the survey party. When the area is found to be in satisfactory condition, it will be accepted. If more than two sounding or sweeping operations by the Government over an area are necessary because of work for the removal of shoals disclosed by prior sounding or sweeping, the cost of such subsequent soundings or sweeping operations will be charged against the Contractor at the rate of \$3,600.00 per day in which the Government plant is engaged in sounding or sweeping, is enroute to or from the site, or is held at or near the site for such operations.

#### 1.8 ACCOMMODATIONS AND MEALS FOR INSPECTORS

(a) The Contractor shall furnish regularly to inspectors, for office purposes and sleeping purposes, when applicable, a suitable separate room onboard the dredge or other craft upon which they are employed. If no suitable office space is available thereon, the Contractor shall furnish suitable alternate accommodations ashore at a location approved by the Contracting Officer and furnish suitable transportation between the alternate accommodations and the dredge or other craft upon which they are employed.

(b) If the Contractor maintains an establishment for the subsistence of his own employees, he shall, when required, furnish to inspectors employed on the work, and to all Government agents who may visit the work

on official business, meals of a quality satisfactory to the Contracting Officer. The meals furnished shall be paid for by the individual consuming the meal at a rate commensurate with the basic Government subsistence rate of: \$5.00 Breakfast; \$5.00 Lunch; \$14.00 Dinner.

#### 1.9 RETAINAGE FOR UNTIMELY SUBMISSION OF SUBCONTRACTING REPORTS

(a) In accordance with Contract Clause 52.219-9I, Small Business and Small Disadvantage Business Subcontracting Plan, and 52.219-16, Liquidated Damages - Small Business Subcontracting Plan, retainage will be withheld from progress payments in an amount sufficient to protect the Government's ability to assess liquidated damages in accordance with Clause 52.219-16 for the contractor's failure to timely submit Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, reports.

(b) The retainage will be determined in accordance with the following formula:

Total dollar amount for subcontracting to small business multiplied by percentage of actual progress on the contract shall be withheld from the next progress payment due after the contractor fails to submit a required report. If one or more reports have been submitted before such failure, formula for determining the amount of retainage will be adjusted by deducting any amounts reported as subcontracted to small business from the total dollar amount proposed to be subcontracted and the difference multiplied by the percentage of actual progress.

(c) Subcontracting plans are not required--

(1) For contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; or

(2) For modifications to contracts that do not contain the clause 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business concerns (or equivalent prior DAR, FPR, or NASA clauses); e.g., contracts awarded before Pub. L. 95-507 and which are within the scope of the contract.

#### 1.10 SHOP DRAWINGS AND MATERIALS SUBMITTAL

(a) Five (5) days prior to the preconstruction conference (see paragraph REQUIRED CONSTRUCTION MEETINGS), the Contractor shall complete and submit to the Contracting Officer, in duplicate, Submittal Register, listing all submittals and dates. In addition to those items listed on the Submittal Register, the contractor will furnish submittals for any deviation from the plans or specifications. The scheduled need dates must be recorded on the document for each item for control purposes. In preparing the document, adequate time (minimum of 15 days) will be allowed for review and approval and possible resubmittal. Scheduling shall be coordinated with the approved progress schedule. The Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. Copies of updated or corrected listings shall be submitted to the Contracting Officer at least every 60 days in the quantity specified. Payment will not be made for any material or equipment which does not comply with contract requirements.

(b) Contractor submittals required by the Technical Provisions are indicated in those provisions and are listed on the Submittal Register furnished in Section 01330, Submittal Procedures. The list does not relieve the Contractor from furnishing submittals required elsewhere in the specifications, those inadvertently omitted from the listing; or from furnishing other submittals that the Government may deem necessary as the work progresses.

(c) Normal review levels for required approvals are indicated by letter designations as follows:

Contractor Quality Control Manager --- (CQC)  
 Area or Resident Engineer ----- (R)  
 Engineering Branch ----- (E)

The Government reserves the right to vary the review levels for (R) and (E) to its convenience.

(d) The Contractor shall use ENG Form 4025, furnished in Section 01330, to transmit Shop Drawings, Equipment Data, Material Samples or Manufacturer's Certificate of Compliance to the Government.

1.11 SAMPLING, CERTIFICATES, AND TESTING

(a) General. Within 30 days after acknowledgment of Notice to Proceed, the Contractor shall submit to the Contracting Officer five (5) copies of a list of the items for which he proposes to furnish manufacturer's certificates and/or samples for inspection and testing. The list shall include, but is not limited to the following information:

- (1) Name of item
- (2) Specification paragraph covering this item
- (3) Date sample will be furnished
- (4) Delivery date of product
- (5) Items for which a certificate will be furnished

(b) Submittals. Any product or item mentioned in these specifications and required to meet Federal, ASTM, AASHTO, U. S. Army or Navy, AREA, AWWA, NEC, and UL Specifications or Codes, specified herein with certain limiting or qualifying requirements, or any product or item which is required to be similar and equal to a specified product or item may require the submission, before delivery of the product or item to the job site, of one or more of the following:

- (1) Certificate by the manufacturer that the item meets the contract requirements.
- (2) Samples for inspection, comparison, and testing, including destructive tests.

(c) Sample delivery. Unless otherwise specified or authorized, all samples shall be delivered (without cost to the Government) to:

U.S. Army Engineer District, Wilmington

Corps of Engineers  
ATTENTION: Construction Branch  
69 Darlington Avenue (28403)  
Post Office Box 1890 (28402-1890)  
Wilmington, North Carolina

If required by the Contracting Officer, duplicate samples shall be shipped to the Wilmington District Office at no expense to the Government.

(d) Testing. All tests required in the Technical Provisions shall be made by and at the expense of the Contractor except those material tests specifically excluded which will be made by and at the expense of the Government. All instruments and personnel required for the required tests shall be furnished by the Contractor. The Government reserves the right to interrupt the work to make tests on all facets of concreting and other operations. These tests will be made as necessary to insure conformance to applicable specifications and drawings and will be made by and at the expense of the Government except Contractor sampling support as required by the Technical Provisions. In those instances where testing is specified to be made at the Government's expense, the cost of the initial testing will be at the Government's expense; however, any retesting due to failure of the materials to meet the requirements in the initial test shall be performed at the Contractor's expense. The retests shall be made at laboratories approved by the Contracting Officer. The costs of retests made at Government laboratories will be deducted from the total amount due the Contractor, at actual cost to the Government, unless otherwise specified.

1.12 CERTIFICATES OF COMPLIANCE  
(1969 MAY OCE)

Any certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in 3 copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

1.13 REQUIRED CONSTRUCTION MEETINGS

(a) In addition to meetings required elsewhere in the specifications, the Contractor and any Subcontractors identified by the Contracting Officer's Representative shall be required to attend a preconstruction meeting (after award of the contract but before Commencement of Work) and a post construction meeting (after final acceptance of the work but before final payment is made). The Contractor and identified Subcontractors shall meet with Corps of Engineers personnel at a time and place determined by the Contracting Officer's Representative.

(b) At the preconstruction conference, the Contractor shall be oriented with respect to Government procedures and line of authority in contractual, administrative, and construction matters. Additionally, a schedule of required submittals will be discussed.

(c) Five (5) days prior to the preconstruction conference, the Contractor shall submit the following items:

Environmental Protection Plan  
Accident Prevention Plan  
Quality Control Plan  
Certificate of completion of Corps Contractor Quality Control Course  
Preliminary Submittal Register (ENG Form 4288 exclusive of Contractor submittal dates)  
Letter Appointing Superintendent (see Contract Clause entitled Superintendence by the Contractor)  
List of Subcontractors

(d) The letter of record will be written documenting all items discussed at the conference and a copy will be furnished by the Contracting Officer's Representative to all in attendance.

#### 1.14 "AS-BUILT" RECORD DRAWINGS

(a) The Contractor shall be responsible for maintaining in good condition one set of full size drawing prints at the job site, on which he shall keep a careful and neat record of all deviations, field changes and modifications from the original contract drawings which are made to each phase of construction as the work progresses. The Contractor is responsible for noting all changes and corrections on these prints promptly as in-place construction activities occur, but in no case less often than on a weekly basis. In addition to the above, the following shall be included:

(1) Actual location of all Contractor installed subsurface utility lines. Type of materials actually installed, major sizes of lines, etc. In order that the location of these lines and appurtenances may be determined in the event the surface openings or indicators become covered or obscured, the record drawings shall show, by offset dimensions to two permanently fixed surface features, both ends of each run and each change in direction. Valves, splice boxes and similar appurtenances shall be located by dimensions along the utility run from a reference point. The average depth below the surface of each run shall also be recorded.

(2) Any shop drawings which constitute part of the design shall be included with the record drawings.

(3) The manufacturer and model number of all major items of equipment shall be shown on the record drawings.

(4) Upon completion of all construction, the Contractor will delete by notation all references to features not constructed.

(b) These annotated prints shall be certified as to their correctness by the signature of the Contractor and turned over to the Contracting Officer not later than ten (10) days after final acceptance of the work by the Government. Marked up prints shall be reviewed for approval by the Contracting Officer and returned for corrections as necessary.

## 1.15 SURVEY DATA

The Contractor shall maintain complete and accurate field notes, sketches, recordings and computations required in establishing the necessary horizontal and vertical control. All survey data shall be recorded in accordance with accepted standards and as approved by the Contracting Officer. All the above data shall be available at all times during the progress of the work for ready examination and use by the Contracting Officer. Upon request of the Contracting Officer, the Contractor shall furnish a copy of above survey data. The Contractor will furnish to the Government copies of all borrow area and beachfill survey data taken as required on a 3.5 inch, high density, microdisks. The points along the beach survey shall be presented in ASCII format and in x, y, z, coordinates or northing, easting, elevation. The survey information will be used by the government to control and make adjustments to the volume of beach fill placed along the beach.

## 1.16 PLANT LOCATION

The Contractor's plant shall be arranged and located in areas approved by the Contracting Officer. This requirement includes the construction plant; offices; shop and storage buildings; housing facilities and all other equipment and materials needed to construct the project.

## 1.17 PLANT

(a) The Contractor agrees to keep on the job sufficient plant to meet the requirements of the work. The plant shall be in satisfactory operating condition, and capable of safely and efficiently performing the work as set forth in these specifications, and the plant shall be subject to inspection by the Contracting Officer at all times. **The plant listed on the Plant and Equipment Schedule, Section 00600, contract clause 52.0000-4036,** is the minimum which the Contractor agrees to place on the job unless otherwise determined by the Contracting Officer, and its listing thereon is not to be construed as an agreement on the part of the Government that it is adequate for the performance of the work.

(b) All scows must be kept in good condition, the coamings repaired and the pockets provided with proper doors or appliances to prevent leakage of material.

(c) All pipelines for hydraulic machines must be kept in good condition at all times and any leaks or breaks along their length must be promptly and properly repaired.

(d) No reduction in the capacity of the plant employed on the work shall be made except by written permission of the Contracting Officer. The measure of the "capacity of the plant" shall be its actual performance on the work to which these specifications apply.

1.18 WORK IN QUARANTINED AREA  
(1968 MAY OCE)

The work called for by this contract involves activities in counties quarantined by the Department of Agriculture to prevent the spread of certain plant pests which may be present in the soil. The Contractor agrees that all construction equipment and tools to be moved from such counties shall be thoroughly cleaned of all soil residues at the construction site with water under pressure and that hand tools shall be

thoroughly cleaned by brushing or other means to remove all soil. In addition, if this contract involves the identification, shipping, storage, testing, or disposal of soils from such a quarantined area, the Contractor agrees to comply with the provisions of ER 1110-1-5 and attachments, a copy of which will be made available by the Contracting Officer upon request. The Contractor agrees to assure compliance with this obligation by all subcontractors.

#### 1.19 INSPECTION

The Contractor shall be required:

(a) To furnish, on the request of the Contracting Officer or any inspector, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the dredging plant as may be reasonably necessary in inspecting and supervising the work. However, the Contractor will not be required to furnish such facilities for the surveys prescribed in the clause entitled FINAL EXAMINATION AND ACCEPTANCE.

(b) To furnish, on the request of the Contracting Officer or any inspector, suitable transportation from all points on shore designated by the Contracting Officer to and from the various pieces of plant, and to and from the dumping ground.

#### 1.20 PARTNERING

(a) In order to most effectively accomplish this contract, the Government proposes to form a cohesive partnership with the Contractor and its subcontractors. This partnership would strive to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget and on schedule. Integral to the partnership would be a joint Contractor/Government effort to settle any disputes that may arise without costly and time consuming litigation. To that end, a non-binding procedure such as the Alternate Dispute Resolution process could be developed and agreed upon by both parties when it is determined to be necessary. This partnership would be bilateral in make-up and participation will be totally voluntary. Any cost associated with developing this partnership will be agreed to by both parties and will be shared equally with no change in contract price.

(b) In addition to partnering with the Contractor, the Government has an existing partnership with the State of North Carolina, acting through the Department of Environment and Natural Resources, which is the sponsor for the Wilmington Harbor 96 Act Project. In this capacity the State pays a portion of the costs of the project and coordinates in the management of it. Funding and project implementation depend on effective communication and cooperation between the Government and the State. While the State is not a party to this contract between the Government and the Contractor, the Contractor should expect that the Government will consult with the State on performance or cost of the work.

#### 1.21 PROTECTION OF EXISTING FACILITIES

The Contractor will not be responsible for any alterations to existing structures or utilities except those made by him for his convenience. The Contractor shall protect all existing structures, including bridges, roadway embankments, utilities and improvements from damage, and, in the event of damage as a result of his operations, the Contractor shall be

responsible for their repair, restoration, or for all cost of damage resulting therefrom. In addition, the Contractor shall be responsible for any damage to bridge or culvert structures or railway embankments or track caused by the unauthorized excavation or excavation beyond the project dimensions shown on the plans. If the Contractor elects to have alterations made to any existing structure, utility or other improvements for his convenience, he shall make arrangements with the owner of the facility for such alterations and the agreement shall be approved by the Contracting Officer prior to their alteration.

#### 1.22 CONTRACT AREA AND TRESPASSING

The Contractor's operation shall be confined solely to those areas for which permission has been granted by the owners to enter. The Contractor shall cut only such timber as may be necessary for the prosecution of the work. The Contractor shall not inflict damage upon land outside the contract area by unwarranted entry upon, passage through, or disposal of material on such land. The Contractor may make a separate agreement with any other party, regarding the use of, or right to, lands or facilities outside the contract area. If such an agreement is made, it shall be in writing and a copy shall be furnished the Contracting Officer. The Contractor shall hold and save the Government, its officers, and agents free from liability of any nature or kind arising from any trespassing or damage occasioned by his operations.

#### 1.23 ACCESS BALD HEAD ISLAND

Access to Bald Head Island is by ferry or barge. Special equipment transfer requirement shall apply to work at this location. This includes access by personnel, vehicle(s) and on site road limitations, etc. The Contractor shall be required to coordinate his/her construction operations with the Village of Bald Head Island.

#### 1.24 COORDINATION WITH OTHER CONTRACTORS

The Government may undertake or award other contracts for dredging near the site of the work under this this contract. The dredging Contractor for other Government contracts will be required to cooperate with the Contractor performing the work under this contract. The Contractor performing the work under this contract shall coordinate his operations with other contractors as needed to avoid conflicts and delays.

#### 1.25 NOTICE TO MARINERS

Should the Contractor, during dredging operations, encounter any objects on the bottom which could be a hazard to navigation, he shall issue an immediate notification to the U.S. Coast Guard as to the location of said object and any other pertinent information necessary to put out a Notice to Mariners. The Contractor shall immediately advise the Contracting Officer of the hazard and the issuance of the notification to the U.S. Coast Guard. A copy of the notification shall be furnished to the Contracting Officer.

#### 1.26 BEACH SURVEYS AND SURVEY PERSONNEL

(a) Survey personnel. All surveys required of the Contractor shall be made by personnel of a professional engineering and/or surveying firm experienced in the practice of such work. The survey personnel shall have the following minimum qualifications:

(1) Instrument men shall be proficient in the operation of precise and semi-precise instruments including transit, level, and alidade, and shall prepare all survey notes in a firm and legible manner.

(2) Rodman and chainman. At least one rodman and one chainman, with a minimum of 6 months prior experience each, shall be assigned to each survey party.

(b) Beach surveys to be performed by the Contractor are as follows:

(1) Preplacement surveys shall be made of the beach (onshore and offshore) area prior to placement of fill and at least one week prior to the initiation of any dredging. Such surveys shall be scheduled so that field notes and computations can be furnished to the Contracting Officer's Representatives in advance of placement so that control of quantities and adjustments to the fill section may be made if necessary. The sections shall be taken at intervals of 100 feet, generally at increments of no more than 1,500 feet in advance of the beach work and at right angles to the longitudinal alignment of the project baseline or as otherwise directed. All sections shall extend from the project baseline, as indicated on the drawings to a minimum distance of 1,500 feet seaward of baseline. Elevations and ocean soundings shall be taken generally at 25-foot intervals and at all break points.

(2) Postplacement surveys shall be made as soon as possible after placement of the fill. The Contractor shall use the same stations that were used in the preplacement surveys. Elevations and ocean soundings shall be taken at 25-foot intervals and at all break points. All sections shall extend from the baseline to a distance offshore not less than 1,500 feet or as needed to indicate the intersection of beach fill with the preplacement bottom profile. In the event the first examination shows additional work is required in an area prior to its acceptance, additional elevations and/or soundings will be required only in the area where additional work is required. Elevations and soundings will continue to be taken until such area is acceptable.

(c) Unless waived in each specific case, all surveys made by the Contractor shall be conducted in the presence of a representative of the Contracting Officer.

(d) The Government reserves the right to make such surveys as necessary for verification of surveys made by the Contractor.

(e) The Contractor shall furnish to the Government copies of all Beach surveys taken as required on a 3.5 inch, high density, microdisks. The points along the beach survey shall be presented in ASCII format and in x, y, z, coordinates or northing, easting, elevation. The survey information will be used by the government to control and make adjustments to the volume of beach fill placed along the beach.

(f) In addition to the above requirements, the Contractor shall compute beach fill volumes for the contract typical sections based on the preplacement surveys as described herein above. The Contractor shall also compute beach fill volumes for construction template with a +0.5 foot vertical tolerance and a -0.5 foot vertical tolerance. Paper plots of the profiles along with digital records of the surveys and computations shall

be furnished to the Government.

1.27 FINAL EXAMINATION AND ACCEPTANCE OF BEACH FILL

(a) After the completion of each contiguous 2500-foot acceptance section of beach fill, the Contracting Officer's Representative will thoroughly examine the section, including the Contractor's soundings or surveys, for final acceptance and payment. The work shall commence at the west end and generally progress to the east to provide a contiguous beach fill. Contractor shall submit the beach fill disposal plan for Contracting Officer's approval:

Acceptance sections less than 2500 feet may occur if a shorter section would complete the work, or, no damage to further operations associated with the contract will occur in the opinion of the Contracting Officer's Representative. The Contracting Officer or authorized representative shall be notified when beach fill soundings and/or surveys are to be made and will be permitted to accompany the survey party; the surveys and/or soundings will occur prior to beach tilling and final acceptance of the section. Requirements for final acceptance shall include proper grading, beach tilling, and removal of all material, equipment, and temporary grade stakes, including beach fill pipeline. See Section 02325, Payments, regarding payment for dredging borrow areas associated with the beach fill.

Should this examination disclose deficiencies of material in the beach fill acceptance section, the Contractor shall be required to place additional material at the contract unit price until the fill requirements are met. If examination shows that material has been deposited elsewhere other than in places designated or approved by the Contracting Officer, the Contractor may be required to remove such misplaced material and deposit it where directed at the Contractor's expense.

(b) Final acceptance of the whole or part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error.

(c) The Village of Baldhead Island intends to issue a contract to rehabilitate the existing tube groins concurrently with this contract. The order of work beach fill completion acceptance sections noted above are intended to facilitate the coordination of the tube groin construction. The approximate locations of the existing tube groins are noted on the beach fill area drawings. Any offshore submerged dredging pipeline shall not be placed within 500 feet of the beach fill landward tie-in to avoid interference with the tube groin construction by others.

1.28 SEAGOING BARGE

The Seagoing Barge Act (4. U.S.C. et seq.) applies to this project. In the event the low bidder contemplates using plant that requires U.S. Coast Guard certification to comply with this Act, the low bidder shall within ten (10) calendar days after bid opening submit a copy of said certificate to the Contracting Officer. Failure to produce the certificate within the required time shall subject the bidder to a determination of nonresponsibility.

1.29 CONTRACT DRAWINGS AND SPECIFICATIONS  
(AUG 2000) DFARS 252.236-7001

(a) The Government will provide to the Contractor, without

charge, five (5) sets of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall-

- (1) Check all drawings furnished immediately upon receipt;
- (2) Compare all drawings and verify the figures before laying out the work;
- (3) Promptly notify the Contracting Officer of any discrepancies;
- (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
- (5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

- (1) Large-scale drawings shall govern small-scale drawings; and
- (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings (Attachment 1).

1.30 RATES OF WAGES

- a. General Decision Number NC030034  
Superseded General Decision No. NC020034

Work under this General Decision Number applies to hopper dredges.

State: North Carolina Construction Type:  
DREDGING County(ies):  
BEAUFORT CURRITUCK PAMLICO  
BERTIE DARE PASQUOTANK  
BRUNSWICK GATES PENDER  
CAMDEN HERTFORD TYRRELL  
CARTERET HYDE WASHINGTON  
CHOWAN NEW HANOVER  
CRAVEN ONSLOW  
HOPPER DREDGE CONSTRUCTION PROJECTS  
Modification Number Publication Date  
0 06/13/2003

COUNTY(ies):  
BEAUFORT CURRITUCK PAMLICO  
BERTIE DARE PASQUOTANK  
BRUNSWICK GATES PENDER  
CAMDEN HERTFORD TYRRELL  
CARTERET HYDE WASHINGTON  
CHOWAN NEW HANOVER  
CRAVEN ONSLOW  
SUNC2002A 05/24/1993

	Rates	Fringes
SELF-PROPELLED HOPPER DREDGES:		
Drag Tenders	8.21	

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Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29 CFR 5.5(a)(1)(ii)).  
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- b. General Decision Number NC030050  
Superseded General Decision No. NC020050

Work under this General Decision Number apply to all dredging work, including mobilization and demobilization.

State: North Carolina Construction Type:  
DREDGING County(ies):  
STATEWIDE  
DREDGING CONSTRUCTION PROJECTS  
Modification Number Publication Date  
0 06/13/2003

COUNTY(ies):  
STATEWIDE  
ENGI0025E 02/01/2003

	Rates	Fringes
HYDRAULIC DREDGES 20" & OVER		
Leverman	19.90	4.01+a
Engineer	18.72	4.01+a
Derrick Operator	17.37	4.01+a
Mate	16.25	3.81+a
Welder	16.79	3.81+a
Spill Barge Operator	17.03	3.81+a
Carpenter	17.27	4.01+a
Electrician	17.70	4.01+a
Oiler	12.75	3.61+a
Deckhand	11.93	3.61+a
Shoreman	11.70	3.61+a
Handyman	11.93	3.61+a
Fill Placer	17.27	4.01+a
Asst. Fill Placer	15.71	4.01+a
HYDRAULIC DREDGES UNDER 20"		
Leverman	10.03	1.73+b
Engineer	9.59	1.73+b
Welder	9.79	1.73+b
Mate	8.82	1.73+b
Oiler & Fireman	8.11	1.73+b
Deckhand	7.77	1.73+b
Launchman	8.19	1.73+b
Shoreman	7.82	1.73+b
Spill Barge Operator	8.68	1.73+b
Spider Barge Operator	8.68	1.73+b
Cook	8.11	1.73+b
Mess Cook	7.71	1.73+b
Messman & Janitor	7.53	1.73+b
CLAMSHELL DREDGES:		
Operator	19.80	4.01+a
Engineer	17.71	4.01+a
Welder	16.52	3.81+a
Mate	15.91	3.81+a
Oiler	12.75	3.61+a
Deckhand	11.93	3.61+a
Scowman	12.10	3.61+a
Handyman	11.93	3.61+a

	Rates	Fringes
DIPPER DREDGES:		
Operator	19.99	4.01+a
Engineer	18.54	4.01+a
Welder	16.79	3.81+a
Mate	16.25	3.81+a
Oiler	12.75	3.61+a
Deckhand	11.93	3.61+a
Scowman	12.10	3.61+a
Handyman	11.93	3.61+a
TUGS LESS THAN 600 HP:		
Tug Master	15.88	4.01+a
Tug Captain	15.37	4.01+a
Tug Deckhand	11.93	3.61+a
TUGS 600 HP TO 1350 HP:		
Tug Master	16.87	4.01+a
Tug Captain	15.53	4.01+a
Tug Deckhand	11.93	3.61+a
TUGS GREATER THAN 1350 HP		
Tug Master	17.95	4.01+a
Tug Captain	17.02	4.01+a
Tug Engineer	17.02	4.01+a
Tug Deckhand	11.93	3.61+a
STEWARD DEPARTMENT:		
Steward	13.14	3.81+a
2nd Cook	11.93	3.61+a
Night Cook	11.93	3.61+a
Messman	11.70	3.61+a
Janitor	11.93	3.61+a
DRILL BOATS:		
Engineer	18.72	4.01+a
Driller	18.03	4.01+a
Blaster	18.03	4.01+a

FOOTNOTE:

- a. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Good Friday. Plus Vacation Contribution of 7% of straight time pay for all hours worked.
- b. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. Plus Vacation Contribution of 7% of stright time pay for all hours worked.

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can

be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U. S. Department of Labor  
 200 Constitution Avenue, N. W.  
 Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N. W.  
 Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
 U. S. Department of Labor  
 200 Constitution Avenue, N. W.  
 Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

PART 2 PRODUCTS (Not Applicable)  
 PART 3 EXECUTION (Not Applicable)

-- End of Section --

ATTACHMENT 1

WILMINGTON HARBOR CLEAN SWEEP			
Plate No.	Sheet No.	Title	Dgn File
P-1	1	INDEX OF DRAWINGS	clswpindx
P-2	2	LOCATION MAP	clswploc
P-3	3	HORSESHOE SHOAL CHANNEL	horchncs
P-4	4	HORSESHOE SHOAL BORING LOCATIONS AND TOP OF ROCK CONTOURS	hortorcs
P-5	5	SNOWS MARSH CHANNEL STA 0+00 TO 50+00	snomshchncs
P-6	6	SNOWS MARSH CHANNEL STA 50+00 TO 157+75.12	snomshchncs
P-7	7	SNOWS MARSH CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 0+00 TO 50+00	snomtorcs
P-8	8	SNOWS MARSH CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 50+00 TO 157+75.12	snomtorcs
P-9	9	LOWER SWASH CHANNEL	lswchncs
P-10	10	LOWER SWASH CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS	lswtorcs
P-11	11	BALDHEAD SHOAL CHANNEL DISPOSAL AREA STA 140+00 TO STA 240+00	exbhscs
P-12	12	BALDHEAD SHOAL CHANNEL DISPOSAL AREA STA 240+00 TO STA 320+00	exbhscs
P-13	13	BATTERY ISLAND CHANNEL	batichncs
P-14	14	BATTERY ISLAND CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS	batiforcs
P-15	15	SOUTHPORT CHANNEL	sptchncs
P-16	16	SOUTHPORT CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS	spttorcs
P-17	17	BALDHEAD - CASWELL CHANNEL	bcaschncs
P-18	18	BALDHEAD - CASWELL CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS	bcastorcs
P-19	19	SMITH ISLAND CHANNEL	smhichncs
P-20	20	SMITH ISLAND CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS	smhitorcs
P-21	21	BALDHEAD SHOAL CHANNEL STA 0+00 TO 85+00	nbhschncs
P-22	22	BALDHEAD SHOAL CHANNEL STA 85+00 TO 215+00	nbhschncs
P-23	23	BALDHEAD SHOAL CHANNEL STA 215+00 TO 270+00	nbhschncs
P-24	24	BALDHEAD SHOAL CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 0+00 TO 85+00	nbhstorcs
P-25	25	BALDHEAD SHOAL CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 85+00 TO 215+00	nbhstorcs
P-26	26	BALDHEAD SHOAL CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 173+00 TO 191+00	borecluster1
P-27	27	BALDHEAD SHOAL CHANNEL BORING LOCATIONS AND TOP OF ROCK CONTOURS STA 215+00 TO 270+00	nbhstorcs
P-28	28	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 51+00 TO 76+00	baldhead83a
P-29	29	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 76+00 TO 100+00	baldhead83a
P-30	30	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 100+00 TO 125+00	baldhead83a
P-31	31	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 125+00 TO 151+00	baldhead83c
P-31A	31A	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 151+00 TO 176+00	baldhead83c
P-31B	31B	BEACH FILL AREA BALDHEAD ISLAND SOUTH STA 176+00 TO 190+00	baldhead83c
P-32	32	BEACH FILL AREA CROSS SECTIONS STA 51+00 TO 68+00	bhxsecta
P-33	33	BEACH FILL AREA CROSS SECTIONS STA 72+00 TO 92+00	bhxsecta
P-34	34	BEACH FILL AREA CROSS SECTIONS STA 96+00 TO 116+00	bhxsecta
P-35	35	BEACH FILL AREA CROSS SECTIONS STA 120+00 TO 140+00	bhxsecta
P-36	36	BEACH FILL AREA CROSS SECTIONS STA 144+00 TO 164+00	bhxsectc
P-36A	36A	BEACH FILL AREA CROSS SECTIONS STA 168+00 TO 185+00	bhxsectc
P-36B	36B	BEACH FILL AREA CROSS SECTIONS STA 187+50 TO 190+00	bhxsectc
P-37	37	OCEAN DREDGED MATERIAL DISPOSAL SITE	odmdscs
<i>Reference Drawings</i>			
R-1		LOWER SWASH CHANNEL	lsw025
R-2		SNOWS MARSH 50+00 - 157+75	snm135cs
R-3		SNOWS MARSH 0+00 - 50+00	snm135cs
R-4		HORSESHOE SHOAL	hss133cs
R-5		BALDHEAD SHOAL CHANNEL STA 30+00 - 80+00 REACH 3	nbhs0911
R-6		BALDHEAD SHOAL CHANNEL STA 0+00 - 85+00 REACH 1 AND 2	nbhs0813
R-7		BALDHEAD SHOAL CHANNEL STA 0+00 - 85+00 REACH 1 AND 2	nbhs0620
R-8		BALDHEAD SHOAL CHANNEL STA 0+00 - 85+00 REACH 1 AND 2	nbh0502
R-9		BALDHEAD SHOAL CHANNEL STA 345+00 - 355+00	nbhs199
R-10		BALDHEAD SHOAL CHANNEL STA 85+00 - 215+00	nbhs199
R-11		BALDHEAD SHOAL CHANNEL STA 85+00 - 130+00 REACH 3	nbhs0911
R-12		BALDHEAD SHOAL CHANNEL STA 85+00 - 130+00 REACH 3	bhs0528
R-13		BALDHEAD SHOAL CHANNEL STA 85+00 - 130+00 REACH 3	nbh30522
R-14		BALDHEAD SHOAL CHANNEL STA 85+00 - 130+00 REACH 3	bhs0606
R-15		BALDHEAD SHOAL CHANNEL STA 85+00 - 130+00 REACH 3	nbs0730
R-16		BALDHEAD SHOAL CHANNEL STA 0+00 - 85+00 REACH 1 AND 2	nbs0730
R-17		BALDHEAD SHOAL CHANNEL STA 30+00 - 80+00 REACH 1 AND 2	nbhs290
R-18		BALDHEAD SHOAL CHANNEL STA 30+00 - 60+00 REACH 1	bhs1029
R-19		SMITH ISLAND CHANNEL	smi0912
R-20		BALDHEAD - CASWELL CHANNEL	cas0226
R-21		SOUTHPORT CHANNEL	spt031ad
R-22		BATTERY ISLAND CHANNEL	bat0221
R-23		BALDHEAD SHOAL CHANNEL 120+00 - 185+00	bhs09ad
R-24		BALDHEAD SHOAL CHANNEL 155+00 - 220+00	bhs129ad
R-25		BALDHEAD SHOAL CHANNEL 190+00 - 215+00	nbh121ad
R-26		BALDHEAD SHOAL CHANNEL 215+00 - 222+00	nbh121ad
R-27		BALDHEAD SHOAL CHANNEL 220+00 - 270+00	bhs094ad
R-28		BALDHEAD SHOAL CHANNEL 260+00 - 290+00	bhs099ad
R-29		BALDHEAD SHOAL CHANNEL 280+00 - 320+00	bhs092ad

(Revised by Amendment No. 0005)

## SECTION TABLE OF CONTENTS

## DIVISION 01 - GENERAL REQUIREMENTS

## SECTION 01355

## ENVIRONMENTAL PROTECTION

## PART 1 - GENERAL

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- 1.2 ENVIRONMENTAL PROTECTION GOAL
- 1.3 DEFINITIONS
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## SECTION 01355

## ENVIRONMENTAL PROTECTION

## PART 1 - GENERAL

## 1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

## U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

40 CFR 261 Identification and Listing of Hazardous Waste

## U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 U.S. Army Corps of Engineers Safety and Health Requirements Manual

## UNITED STATES CODE (USC)

42 USC 116 Emergency Planning and Community Right-to-know Act of 1986 (also known as SARA Title III or EPCRA)

## 1.2 ENVIRONMENTAL PROTECTION GOAL

Stewardship of the environment is an important responsibility of the U.S. Army Corps of Engineers (USACE) and its contractors, and environmental protection is a continual goal. For this specification, environmental protection includes, as a minimum, prevention of the following actions:

- a. release into the environment of significant amounts of pollutants,
- b. addition of excessive quantities of silt and/or sediment to waterbodies,
- c. destruction or alteration of wetlands or aquatic vegetation,
- d. unfavorable alteration of ecological relationships,
- e. adversely affecting endangered and threatened species of plants and/or animals,
- f. causing significant adverse impacts on fish and wildlife resources,
- g. destruction or alteration of important terrestrial vegetation,
- h. destruction or alteration of important landforms such as dunes,
- i. reducing the aesthetic or recreational values of the environment,
- j. creating major or unpleasant increases in noise levels, and
- k. disturbing significant historical or archaeological objects.

The Contractor will conduct all activities performed under this contract in ways that support this goal. The Contractor will use management measures to control solid and liquid waste, noise levels, radioactive materials, siltation and sedimentation, and pollutants in any form. The work covered by this section consists of furnishing all labor, material, and equipment and

performing all work required for environmental protection during and/or as a result of construction operations under this contract. Additional instructions related to specific aspects of environmental compliance appear in other provisions of these specifications.

### 1.3 DEFINITIONS

a. Environmental Pollution - Release into the environment of chemical, physical, or biological substances or agents which may adversely affect human health or welfare; adversely affect other species; unfavorably alter ecological relationships; degrade water, air, or land quality; or degrade aesthetic qualities of the environment.

b. Environmental Protection - Prevention of pollution of and/or damage to the environment. Environmental protection applies to land, air, and water resources; life forms and their habitat; wetlands; endangered and threatened species; historic and archaeological resources; visual aesthetics; noise and odors; solid, liquid, and gaseous waste and pollutants; radiant energy; and radioactive material.

c. Contractor Generated Hazardous Waste - Material that, if abandoned, released, or disposed of, may meet the definition of a hazardous waste. These substances would typically consist of material brought to the job site to use in work activities, but which are not fully consumed during the contract. Examples include, but are not limited to, excess paint thinners (methyl ethyl ketone, toluene, etc.), waste thinners, excess paint, excess solvents, waste solvents, excess pesticides, and contaminated pesticide equipment rinse water.

d. Pesticide - Any substance or mixture of substances intended for preventing, destroying, or repelling any pest, or intended to destroy or inhibit plant growth.

e. Pests - Undesirable life forms, including some kinds of bacteria, viruses, algae, fungi, nematodes, snails, borers, snakes, birds, rodents, weeds, and other organisms (except agents of human or animal disease) that adversely affect the well-being of humans, animals, or plants; attack or damage real property, supplies, equipment, or vegetation; or are otherwise objectionable.

f. Surface Discharge - Water released with possible sheeting action and the potential for causing subsequent soil erosion, siltation, and sedimentation. Surface discharges may flow to drainage ditches, storm sewers, creeks, and/or rivers, which may be "waters of the United States." Such discharges generally require a permit from the governing agency.

g. Waters of the United States - Waters under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

h. Wetlands - Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Only personnel designated by the USACE will make any

official determination whether any area affected by work under this contract is classified as a jurisdictional wetland.

#### 1.4 GENERAL REQUIREMENTS

The Contractor shall minimize environmental pollution and damage that may occur as a result of contract-related activities. Environmental resources within the project boundaries and those affected outside the work limits shall be protected during the entire duration of this contract. In order to protect the environment and provide for abatement and control of pollution from construction activities, the Contractor and his/her subcontractors shall comply with (1) all applicable Federal, State, and local laws and regulations concerning pollution control and the protection of the environment, (2) all applicable provisions of the Corps of Engineers Manual, EM 385-1-1 entitled "Safety and Health Requirements Manual" in effect on the date of this solicitation, and (3) specific requirements stated elsewhere in the contract specifications. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

#### 1.5 COMPLIANCE OF SUBCONTRACTORS

Compliance with the provisions of the contract specifications by subcontractors shall be the responsibility of the Contractor.

#### 1.6 PAYMENT FOR ENVIRONMENTAL PROTECTION

Environment protection costs shall be considered incidental to and included in the cost for the various items of work as listed in the BIDDING SCHEDULE and described elsewhere in these specifications. The Contractor shall be responsible for payment of fees associated with environmental permits, applications, agency reviews, and/or notices obtained by the Contractor. All costs associated with this section shall be included in the contract price. The Contractor shall be responsible for payment of all fines/fees and for violation or non-compliance with Federal, State, Regional, and local laws and regulations. Any exception(s) will be conducted only as directed by the Contracting Officer and will be an additive payment.

#### 1.7 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Environmental Protection Plan; G

#### 1.8 ENVIRONMENTAL PROTECTION PLAN

No later than five (5) days prior to the preconstruction conference, the Contractor shall submit an Environmental Protection Plan for review and acceptance by the Contracting Officer. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential

environmental issues which the Contractor must address during construction. Issues of concern shall be defined within the Environmental Protection Plan as outlined in this section. The Contractor shall address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but which the Contractor considers necessary, shall be identified and discussed after those items formally identified in this section. The plan shall detail the actions, which the Contractor shall take to comply with all applicable Federal, State, and local laws and regulations concerning environmental protection and pollution control and abatement, as well as the additional specific requirements of this contract. The Environmental Protection Plan shall be current and maintained onsite by the Contractor.

The Government will consider an interim plan for the first 30 days of operations. However, the Contractor shall furnish an acceptable plan not later than 30 calendar days after receipt of the Notice to Proceed. The Government reserves the right to require the Contractor to make changes in the Environmental Protection Plan or operations if the Contracting Officer determines that environmental protection requirements are not being met. No physical work at the site shall begin prior to acceptance of the Contractor's plan or an interim plan covering the work to be performed. Approval of the Contractor's plan for environmental protection will not relieve the Contractor of his responsibility to continually manage all aspects of his work to adequately meet the environmental requirements stated in this specification. The Environmental Protection Plan shall include, but not be limited to, the following:

#### 1.8.1 Personnel Responsible for Environmental Protection

Names and qualifications of the person(s) within the Contractor's organization who are responsible for ensuring adherence to the Environmental Protection Plan,

#### 1.8.2 Description of the Environmental Protection Training Program

A brief overview of the Contractor's training program and the names and qualifications of the person(s) responsible for training the Contractor's personnel in environmental protection.

#### 1.8.3 Applicable Laws and Regulations

A list shall be provided which includes all Federal, State, and local laws, regulations, and permits concerning environmental protection and pollution control and abatement that are applicable to the Contractor's proposed operations. The requirements imposed by these laws, regulations, and permits shall be noted along with each listed item.

#### 1.8.4 Terms and Conditions of Agency Certifications and Approvals

Compliance with their terms and conditions of all required environmental certifications and approvals will be a responsibility of the Contractor. See paragraph ENVIRONMENTAL PERMITS AND COMMITMENTS of this section.

#### 1.8.5 Methods for Protection of Resources

The Contractor shall provide a list of methods and procedures to protect resources within authorized work areas needing protection, including trees, shrubs, vines, grasses and ground cover, landscape features, air and water quality, fish and wildlife, soil, dunes, wetlands, endangered and threatened species, and archaeological and historic resources. The Contractor shall set out the procedures to be followed to correct pollution of the environment due to accident, natural causes, or failure to follow the procedures set out in the Environmental Protection Plan.

#### 1.8.6 Procedures to be Implemented

The Contractor shall provide a list of procedures to be implemented, which will provide the required environmental protection and comply with the applicable laws and regulations. The Contractor shall set out the procedures to be followed to correct pollution of the environment due to accident, natural causes or failure to follow the procedures set out in accordance with the environmental protection plan.

#### 1.8.7 Solid Waste Disposal Area

The Contractor shall provide a copy of the permit and license for the solid waste disposal area and a description of its location.

#### 1.8.8 Drawings

The Contractor shall provide drawings showing locations of any proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials.

#### 1.8.9 Environmental Monitoring Plan

The Contractor shall provide an environmental monitoring plan for the job site, including land, water, air, and noise monitoring. Special emphasis shall be provided for the monitoring required in subparagraph, Protection of Fish and Wildlife of this section.

This plan shall lay out the details of environmental monitoring required by laws and regulations, and a description of how this monitoring will be accomplished for this job, including land, water, and air resources, as well as noise.

#### 1.8.10 Methods for Surface and Ground Water Protection

The Contractor shall provide a list of methods for protecting surface and ground water during construction activities.

#### 1.8.11 Work Area Site Plan

The Contractor shall provide a work area site plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. The plan shall include measures for marking the limits of use areas. This applies to work areas in the Cape Fear River, the Atlantic Ocean,

and on land. In selecting work areas on land, the Contractor shall confine the locations of activities, equipment storage, and staging areas to previously cleared areas and non-wetland areas to the maximum extent practicable. Access routes to such work areas shall also avoid wetlands.

#### 1.8.12 Erosion and Sediment Control

The Contractor shall provide a plan for erosion and sediment control measures to be performed at all upland areas to be disturbed. The plan shall show location of all temporary silt fence and other necessary measures. The Contractor shall coordinate all upland area disturbance activities with the North Carolina Department of Environment and Natural Resources (NCDENR) Land Quality Section. For all upland disturbance activities, a sedimentation and erosion control plan shall be submitted to and approved by NCDENR Land Quality Section or the Contractor shall obtain written confirmation from the NCDENR Land Quality Section that a sedimentation and erosion control plan is not required.

#### 1.8.13 Location Plans for Temporary Activities and Facilities

Drawings shall be provided showing the locations of any proposed modifications of the project site or adjacent affected areas. Temporary roadways, access pathways, excavations, embankments, structures, material storage areas, sanitary facilities, and stockpiles of materials of any kind shall be shown. Approval shall be obtained from the Contracting Officer prior to the implementation of any such temporary measures.

#### 1.8.14 Spill Control Plan

The Spill Control Plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by the Emergency Planning and Community Right-to-Know Act of 1986 (also known as SARA Title III or EPCRA) or regulated under State or local laws or regulations. The Spill Control Plan supplements the requirements of EM 385-1-1. This plan shall include as a minimum:

- a. The name of the individual who will be responsible for implementing and supervising the containment and cleanup.
- b. Spill control training requirements for the Contractor's personnel and methods of accomplishing the training.
- c. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.
- d. The names, locations, and telephone numbers of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.
- e. The methods and procedures to be used for expeditious contaminant cleanup.
- f. The name of the individual who will report any spills or hazardous

substance releases and who will follow up with complete documentation. This individual shall immediately notify the Contracting Officer in addition to the legally required Federal, State, and local reporting channels (including the National Response Center at 1-800-424-8802) if a reportable quantity spill occurs. The plan shall contain a list of the required reporting channels and telephone numbers.

#### 1.8.15 Recycling and Waste Minimization Plan

This plan shall detail the Contractor's actions to comply with the requirement to participate in State and local government sponsored recycling programs to reduce the volume of solid waste materials at the source.

#### 1.8.16 Contaminant Prevention Plan

This plan shall identify potentially hazardous substances to be used at the job site and intended actions to prevent accidental or intentional introduction of such materials into the air, water, or ground. The plan shall detail provisions to be taken to meet Federal, State, and local laws and regulations regarding the storage and handling of these materials. (Reference 40 CFR 261, Identification and Listing of Hazardous Waste)

#### 1.8.17 Traffic Management Plan

This plan shall identify and explain measures which will be used to minimize disruption of roadway and/or navigation traffic, and to manage traffic that may be interrupted, delayed, or rerouted by operations conducted under this contract.

#### 1.8.18 Operational Plan To Minimize Turtle Takes

If a hopper dredge is to be used to accomplish the work, the Contractor shall include, as part of the Environmental Protection Plan, an Operational Plan to minimize turtle takes.

### 1.9 QUALITY CONTROL

The Contractor shall establish and maintain quality control for environmental protection of all items set forth herein. The Contractor shall record on daily reports any problems in complying with laws, regulations, and ordinances, as well as any corrective action taken.

### 1.10 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

The Contract specifications and drawings have been prepared to comply with the special conditions and mitigation measures of an environmental nature, which were established during the planning, and development of this project. The Contractor is advised that deviations from the specifications or drawings (e.g., proposed alternate borrow areas, disposal areas, staging areas, access routes, etc.) could result in the requirement for the Government to reanalyze the project from an environmental standpoint. Deviations from the construction methods and procedures indicated on the contract documents which may have an environmental impact may require an extended review and processing time and are subject to prior Government approval. The Contracting Officer reserves the right to disapprove alternate methods, even if they are more

cost-effective, if the Contracting Officer determines that the proposed alternate method will have an adverse environmental impact.

#### 1.11 NOTIFICATIONS

The Contractor shall be responsible for promptly notifying the Contracting Officer and other appropriate authorities in the event of any incident involving a reportable spill, a reportable release of contaminants, or the death or injury of any endangered or threatened animal.

#### 1.12 CORRECTIONS OF NONCOMPLIANCE

Upon the discovery of any failure, either intentional or unintentional, by the Contractor to fully comply with the aforementioned Federal, State, or local laws, regulations, permits, or elements of the Contractor's environmental protection plan, the Contracting Officer will notify the Contractor in writing regarding the noncompliance and any corrective action required. Such notice, when delivered to the Contractor or his authorized representative at the work site, shall be deemed sufficient notification. The Contractor shall, after receipt of such notice, inform the Contracting Officer of proposed corrective action and take such action as may be approved. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the Contractor for any such suspension.

### PART 2 - PRODUCTS (NOT USED)

### PART 3 - EXECUTION

#### 3.1 ENVIRONMENTAL PERMITS AND COMMITMENTS

This section supplements the Contractor's responsibility under the contract clause PERMITS AND RESPONSIBILITIES to the extent that the Government has already obtained environmental permits. The Government has obtained necessary clearances in accordance with the North Carolina Division of Water Quality, USEPA, and the North Carolina Division of Coastal Management.

##### 3.1.1 Water Quality Certification

Proposed work is authorized by (modified to): Water Quality Certification 3085, issued by N.C. Division of Water Quality, N.C. Department of Environmental and Natural Resources (see Attachment 1).

##### 3.1.2 Conditions of Coastal Consistency Concurrence

**Letter of 15 June 2002 from the N.C. Division of Coastal Management provided concurrence that proposed dredging is consistent with the North Carolina Coastal Management Program (see Attachment 2).**

##### 3.1.3 Key Environmental Conditions Related to Proposed Work

**a. Beach renourishment shall occur only between 16 November and 30 April.**

- b. Hopper dredging permitted only between 1 December and 31 March.
- c. Increases in turbidity outside the area of construction or construction related discharge shall not exceed 25 NTU's.
- d. Seasonal weather patterns may affect work activities and should be anticipated.
- e. Blasting is not permitted.

### 3.2 PROTECTION OF ENVIRONMENTAL RESOURCES

The environmental resources within the project boundaries and those affected outside the limits of work under this contract shall be protected during the entire period of this contract. The Contractor shall protect resources, as required by these specifications and as indicated on contract drawings, in spite of interference or inconvenience which their protection may cause to the Contractor's work under the contract. The Contractor shall confine his activities to the areas defined by the drawings and specifications or to off-site staging and/or storage areas approved by the Contracting Officer. Environmental protection shall be as stated in the following paragraphs.

#### 3.2.1 Protection of Land Resources

The Contractor shall confine activities to areas defined by the drawings and specifications. Prior to beginning any field work, the Contractor shall identify all land resources to be preserved within the work area. Except in areas indicated on the drawings or specified to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, or land forms without special permission from the Contracting Officer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special use is permitted, the Contractor shall provide effective protection to prevent damage to the tree(s) and any other land and vegetative resources. Unless specifically authorized by the Contracting Officer, no construction equipment or materials shall be placed or used within the drip line of trees to be saved and which are shown on the drawings. Also, no excavation or fill shall be permitted within the drip line of trees to be saved except as shown on the drawings.

Prior to any land disturbing activities, the Contractor shall mark areas, which are required for accomplishment of all work to be performed under this contract. In addition, a brightly colored "warning barrier fence" shall be installed to mark specific areas or objects within the general work area which are to be saved and protected. Posts of sufficient length and spacing shall be provided and installed to adequately support the fence. The Contractor shall maintain the fence in a satisfactory condition for the duration of the project, and shall remove and dispose of the fence in a satisfactory manner after completion of the construction activities.

Monuments and markers shall be protected before construction operations commence. Where construction activities are to be conducted during darkness,

reflective or lighted markers shall be used to ensure visibility. The Contractor shall convey to his personnel the purpose of the protective marking(s) and the necessity for protecting marked objects.

### 3.2.2 Protection of Water Resources and Wetlands

The Contractor shall keep activities under surveillance, management, and control to avoid pollution of groundwater or any body of surface water, including the ocean, estuaries, rivers, streams, creeks, canals, ditches, lakes, or ponds. For the purpose of this specification, pollution includes spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, dumping, or disposing of harmful substances into the environment. Harmful substances, including, but not limited to, fuels, oils, bitumens, calcium chloride, and acids shall not be allowed to pollute any waters. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, County, and Municipal laws concerning water pollution control. All work under this contract shall be performed in such a manner that objectionable conditions will not be created in any groundwater or surface waters.

The Contractor is responsible for monitoring all waters and wetland areas affected by operations conducted under this contract. In the event that water quality or wetland violations result from the Contractor's operation, the Contractor shall suspend the operation(s) causing the violation, and such suspension shall not form the basis for a claim against the Federal government.

If it is determined that pollutants have been allowed to enter any groundwater or surface water as a result of activities conducted under this contract, the Contractor shall take immediate corrective action. Any incident causing water pollution, even if minor, shall be promptly reported to the Contracting Officer.

It is the responsibility of the Contractor to comply with all Federal and State laws pertaining to dredging and placement of dredged material. In addition, it is the responsibility of the Contractor to assure that no wetlands outside the work limits shown on the drawings are adversely affected by dredging, placement of dredged material, or associated operations (including land-based activities) conducted under this contract. Any placement or leakage of dredged or fill material, even if unintentional, outside the placement limits designated in this contract or not in compliance with placement criteria in this contract, is the responsibility of the Contractor, and is subject to removal by the Contractor at his own expense upon the request of the Contracting Officer. Upon discovery of such misplaced material, the Contractor shall immediately take corrective action to stop the continued misplacement of material, and shall notify the Contracting Officer for further instructions.

### 3.2.3 Protection of Fish and Wildlife

The Contractor shall at all times take such measures as may be required and perform all work in a manner that minimizes the disturbance of or interference with fish and wildlife, or fish and wildlife habitat. The Contractor shall not alter water flows or otherwise disturb native habitat in or adjacent to the project area which, in the opinion of the Contracting Officer, are

critical to fish, shellfish, or wildlife. Measures will be taken to prevent polluting or fouling any body of water.

Migratory birds are protected under the Migratory Bird Act of 1918, as amended. The Contractor may be held responsible for harming or harassing these birds, their eggs, or their nests as a result of any activities conducted under this contract. If nesting birds are encountered, the Contracting Officer shall be contacted immediately for instructions.

#### 3.2.4 Protection of Endangered and Threatened Species

Species Federally listed as endangered or threatened receive a high level of protection under the Endangered Species Act of 1973 (PL 93-205), as amended. Endangered or threatened species, which may be encountered in the project area during this project, could include sea turtles, whales, manatees, and shortnose sturgeon. In addition, all marine mammals, including whales, manatees, porpoises, and dolphins, are protected under the Marine Mammal Protection Act of 1972 (PL 92-522), as amended. Other protected species that may be present in the area include the American alligator and migratory birds. Therefore, the Contractor shall take such measures as may be required to assure that any activities conducted as a part of this contract do not kill, injure, capture, pursue, harass, or otherwise harm any of these species. Specific types of equipment and operations pose different types of hazards, so specific protective measures will vary depending upon the type of operation being conducted. The Contractor should be aware that protected species frequently occur in the work vicinity, and all work should be planned accordingly.

##### 3.2.4.1 Notification and Reporting Requirements for Incidents Involving Protected Species

Incidents involving the death or injury of any protected species or the recovery of any body parts of these species, including sea turtles, whales, dolphins, porpoises, manatees, and shortnose sturgeons, have specific requirements for agency notification. If any dead, injured, or sick individual of any protected species is found in the project area by the Contractor, it should be left undisturbed and the Contracting Officer should be notified immediately. The Contractor will also prepare and provide to the Contracting Officer written records detailing any such incident involving protected species within 24 hours of its occurrence.

##### 3.2.4.2 Hopper Dredge

Hopper dredging poses a threat to sea turtles, which are subject to injury or mortality if they are sucked through the dredging system. If 2 sea turtles are taken within 24 hours or 3 turtles are taken in a year, consultation is required with the Contracting Officer to determine compliance with the contract requirements. If 5 turtles are taken for the contract, all work by hopper dredge under this contract will be terminated at no cost to the Government and the Contractor shall complete the work remaining with other plant and equipment.

The use of hopper dredges is subject to specific requirements. Observer and reporting requirements are discussed below. Other specific requirements for hopper dredges are discussed in Section 02325: **DREDGING AND BEACH-FILL WORK.**

## 3.2.4.2.1 Observers

Observers shall be used to monitor take of sea turtles and shortnose sturgeon and aid in avoidance of marine mammals.

a. Inflow screens are required at all times, and observer coverage shall be provided 24 hours a day. Observers shall have necessary permits from the State of North Carolina to work with sea turtles and shortnose sturgeons.

b. Screens shall be examined for sea turtle and sturgeon parts after each filling of the hopper is complete. Other debris found on the screens during their examination for sea turtle or sturgeon parts shall be disposed of so as not to impede their functioning during the next loading cycle.

c. The time, date, and condition (fresh or decaying) of all turtle and sturgeon parts recovered shall be recorded. Reach dredged shall also be recorded (channel name and station numbers). Sea turtle or sturgeon parts unidentifiable to species shall be placed in plastic bags, labeled as to the time and date of collection, and frozen for later analysis. Identifiable sea turtle parts and whole specimens shall be frozen and the District Office contacted for directions on transport or disposition of specimens. For both sea turtle parts and whole specimens the observer shall take a tissue sample for genetic analysis. The District Office protocol shall be adhered to and prepared samples submitted to NMFS - La Jolla, CA Laboratory, care of Dr. Peter Dutton (address referenced in protocol, in attachment 4).

d. When multiple parts are taken, the observer shall determine, to the best of his ability, the number of sea turtles or sturgeons the multiple parts represent. The basis for the decision shall be noted (e.g., two left-front flippers, etc.)

e. The Contractor shall provide any unidentified sea turtle and sturgeon parts to the North Carolina Wildlife Resources Commission (Matthew Godfrey, pager number (252) 247-8117 or Wendy Cluse, phone number (252) 725-5328, to be identified to species if possible. If positive identification is impossible, specimens shall be recorded as "identified sea turtle" or "unidentified sturgeon." After such examination is complete, all parts shall be properly disposed of.

f. The taking of any sea turtle or sturgeon parts shall be reported to the Contracting Officer immediately. Observer data sheets shall be faxed to the Contracting Officer as soon as possible after the take.

g. Sea turtles, which are still alive when taken and appear to have a chance for recovery shall be transported by the Contractor for treatment as soon as possible. The North Carolina Wildlife Resources Commission (Matthew Godfrey 252/728-1528) should be contacted to determine the appropriate facility to receive the turtle. If the turtle survives and is fit for release, the Contractor shall make arrangements to transport it to the ocean. If permanently handicapped, the Contractor shall seek a suitable aquarium for long-term care. If none can be found, the turtle shall be released to the ocean after providing acceptable documentation of his search efforts to the Contracting Officer.

h. From 1 December through 31 March, one endangered species observer with at-sea large whale identification experience must be present to conduct daytime observations for whales. One of the sea turtle observers may perform this observation work. Observers must be present to watch for sea turtles and whales around the clock, at least one observer during day and one at night. Records shall be kept of the date, time, and approximate location of all marine mammal sightings. Care shall be taken not to closely approach any whales or manatees observed during dredging. The observer shall serve as a lookout to alert the vessel pilot of the occurrence of these animals. If any are observed, collisions shall be avoided either through reduced vessel speed, course alteration, or both. During the evening hours, when there is limited visibility due to fog, or when there are sea states of greater than Beaufort 3, the dredge must slow down to 5 knots or less when transiting between areas if whales have been spotted within 15 nautical miles of the vessel's path within the previous 24 hours.

i. Reporting. Daily observer reports shall be submitted with the "Daily Report of Operations for Hopper Dredges." Reports of take of any listed species shall be furnished to the Contracting Officer as soon as possible. All sea turtle sightings and locations (name of channel reach) shall be noted on the daily reports.

#### 3.2.4.3 Pipeline Dredges

Special precautions to protect listed species are not required for pipeline dredges except as noted in subparagraph Avoidance of Marine Animals, below.

#### 3.2.4.4 Mechanical Dredges

Special precautions to protect listed species are not required for mechanical dredges except as noted in subparagraph Avoidance of Marine Animals, below.

#### 3.2.5 Avoidance of Marine Animals

(1) Records shall be kept of the date, time, and approximate location of all marine mammal sightings. Care shall be taken not to closely approach (within 300 feet) any whales, manatees, or other marine mammals during dredging or transportation of dredged material. The observer shall serve as a lookout to alert the dredge operator and/or vessel pilot of the occurrence of these animals.

(2) If whales or manatees are observed within 300 feet of the area being dredged, all work shall cease until the animals have left the area. If any marine mammals are observed during transit to the new Ocean Dredged Material Disposal Site (ODMDS), collisions shall be avoided either through reduced vessel speed, course alteration (alive, injured, or dead), or both.

(3) Sightings of whales or manatees (alive, injured, or dead) in the work area shall be reported to the Contracting Officer as soon as possible. Sightings of whales shall also be reported as soon as possible to the NMFS Whale Stranding Network at 305-862-2850.

(4) During ocean transit of dredging and disposal equipment from 1 December through 31 March one endangered species observer with at-sea large whale identification experience must be present to conduct daytime

observations. Records shall be kept of the date, time, and approximate location of all marine mammal sightings. Care shall be taken not to closely approach any whales or manatees observed during dredging. The observer shall serve as a lookout to alert the vessel pilot of the occurrence of these animals. If any are observed, collisions shall be avoided either through reduced vessel speed, course alteration, or both. During the evening hours, when there is limited visibility due to fog, or when there are sea states of greater than Beaufort 3, the dredge must slow down to 5 knots or less when transiting between areas if whales have been spotted within 15 nautical miles of the vessel's path within the previous 24 hours.

### 3.2.6 Beach Tilling

Prior to final acceptance of the beach fill work as described in Section 01100, Final Examination and Acceptance of Beach Fill, the Contractor shall be required to till the beach fill areas located between the mean high water line (+2.7 NGVD) and the landward tie-in of the berm. The areas shall be tilled with equipment operated so as to penetrate and loosen beach sand. Beach tilling operations shall be completed by April 30, 2004.

- a. vertically to a depth of 36 inches, and
- b. horizontally without leaving unloosened compact sand between the adjacent paths of tilling equipment.
- c. Leveling. To remove furrows, the contractor shall level any materials which are tilled by dragging the areas during the tilling with fencing material, shoreline pipe etc., or approved methods.

#### 3.2.6.1 Measurement and Payment for Beach Tilling

**The unit measurement for beach tilling will be the acre. The quantities to be paid for shall comprise the actual areas acceptably tilled as directed by the Contracting Officer, measured to the nearest one-hundredth of an acre based on horizontal measurements. The quantities measured as provided above will be paid for at the applicable contract unit price per acre for bid item "Beach Tilling", which price and payment shall constitute full compensation for tilling, leveling and furnishing all labor, tools, equipment, services, and incidentals necessary to complete the work in accordance with this section of the specifications.**

### 3.2.7 Protection of Air Resources

The Contractor shall keep construction activities under surveillance, management, and control to minimize pollution of air resources. All activities, equipment, processes, and work operated or performed by the Contractor in accomplishing the specified construction shall be in strict accordance with all Federal and State of North Carolina emission and performance laws and standards. Ambient air quality standards set by the Environmental Protection Agency shall be met for the construction operations and activities conducted under this contract. Special management techniques shall be implemented as set out below.

- a. Particulates - Airborne particulates, including dust particles, from

construction activities and processing and preparation of materials shall be controlled at all times, including weekends, holidays, and hours when work is not in progress. The Contractor shall maintain all excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, disposal sites, borrow areas, and all other work areas free from airborne dust and other particulates which would cause exceedance of Federal, State, or local air pollution standards or which would cause a hazard or nuisance.

- b. Odors - Odors shall be controlled at all times for all construction activities, as well as processing and preparation of materials.
- c. Monitoring - Air in all areas affected by construction activities shall be monitored by the Contractor.

### 3.2.8 Noise Protection

The Contractor shall keep construction activities under surveillance, management, and control to minimize damage to the environment by noise.

### 3.2.9 Protection of Historic, Archaeological, and Cultural Resources

Significant cultural resources may occur in the project vicinity, although none have been identified within the boundaries of the construction area. If, during any activities under this contract, objects are encountered that may be archaeological or historic material, the Contractor shall immediately record the location of the contact or discovery, shall leave the find undisturbed, and shall carefully save any recovered cultural material until the appropriate authorities can inspect it. The Contractor shall temporarily suspend work in the vicinity of the discovery and shall immediately notify the Contracting Officer or designated representative. Resources covered by this paragraph include, but are not limited to, human skeletal remains or burials, wooden or metal-hulled boats, navigation relics, artifacts, and walls or other constructed features. Work suspension will not be required upon discovery of isolated bricks, bottles, nails, or other debris. However, even these isolated finds shall be either left in place or retained by the Contractor for inspection by the Contracting Officer or appropriate representative.

Cultural resource contacts may be evidenced by recovery of multiple artifacts and/or repeated contact with an obstruction and/or recovery of wooden planking or framing that may represent an intact portion of a shipwreck, and/or brass or copper plating or fittings, chain, old style anchors, ship tackle, ballast, or similar items. Cultural resources in the project area, including both wooden and metal-hulled vessels as well as individual artifacts, are State-owned and are protected under a number of State and Federal laws and regulations.

### 3.2.10 Management of Waste and Debris

- a. Disposal of Solid Wastes - Solid waste is rubbish, debris, waste materials, garbage, and other discarded solid materials (excluding clearing debris and hazardous waste). Solid waste shall be placed in containers and disposed on a regular schedule. All handling and disposal shall be conducted in such a way as to prevent spillage and contamination. The Contractor shall transport all solid waste off

Government property and dispose in compliance with Federal, State, and local requirements. Upon job completion, the Contractor shall inspect all areas of the job site and assure that all solid waste is removed.

- b. Disposal of Contractor Generated Hazardous Waste - Hazardous wastes are hazardous substances as defined in 40 CFR 261, or as defined by applicable State and local regulations. Hazardous waste generated by construction and maintenance activities shall be removed from the work area and disposed in compliance with Federal, State, and local requirements. The Contractor shall segregate hazardous waste from other materials and wastes, and shall protect it from the weather by placing it in a safe, covered location. Precautionary measures against accidental spillage such as berming or other appropriate measures shall be taken. Hazardous waste shall be removed from the job site within 60 days. Hazardous waste shall not be dumped onto the ground, into storm sewers or open water courses, or into any sanitary sewer system.
- c. Disposal of Wastewater - Disposal of wastewater shall be conducted in such a manner as to avoid polluting the environment. All wastewater shall be processed, filtered, stored, or otherwise treated prior to release into any natural body of water, including the ocean, inlets, estuaries, sounds, creeks, canals, ditches, or ponds.
- d. Disposal of dredged material debris. See SECTION 02325, paragraph, DISPOSAL OF EXCAVATED MATERIAL.

### 3.2.11 Storage and Handling of Fuels and Lubricants

All fuel storage tanks used at the work sites must be above ground. Fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants and waste oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with Federal, State, and local laws and regulations.

### 3.2.12 USDA Quarantine Considerations for Cleaning Equipment

A compliance agreement between the U.S. Department of Agriculture (USDA) and the USACE requires that measures be taken to assure that the movement of construction equipment between job sites does not spread the infestation of serious plant pests that may be present in the soil (ER 1110-1-5). The southeastern counties of North Carolina, as well as major portions of all southeastern states, are in a quarantine area for such pests, including the imported fire ant. Therefore, the Contractor shall thoroughly clean all construction equipment at the previous job site in a manner that ensures that the equipment is free from residual soil, egg deposits from plant pests, noxious weeds, and plant seeds. In addition, all construction equipment used for this USACE contract shall be thoroughly cleaned by the Contractor before it is removed from the job site. The Contractor shall consult with the USDA Plant Protection and Quarantine jurisdictional office for additional cleaning requirements that may be necessary. See SECTION 01100, paragraph WORK IN QUARANTINED AREA.

### 3.3 RESTORATION OF DAMAGED RESOURCES

All landscape features damaged or destroyed during construction operations that were not identified for removal shall be restored. Any vegetation or landscape feature damaged shall be restored as nearly as possible to its original condition. This work shall be accomplished at the Contractor's expense.

### 3.4 MAINTENANCE OF POLLUTION CONTROL FACILITIES

The Contractor shall maintain all constructed facilities and portable pollution control devices for the duration of the contract or for that length of time that construction activities create the particular potential pollutants requiring control.

### 3.5 RESTORATION OF LANDSCAPE DAMAGE

The Contractor shall restore all landscape features damaged or destroyed during construction operations outside the limits of approved work areas. Such restorations shall be in accordance with a proposed landscape restoration plan submitted to and approved by the Contracting Officer.

### 3.6 TRAINING OF CONTRACTOR PERSONNEL

Contractor personnel shall be trained in environmental protection and pollution control. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel at least once each month. Meeting and training shall include, as a minimum, explanation of the requirements to protect endangered and threatened species, marine mammals, migratory birds, archaeological and historic resources, wetlands, and native vegetation; methods of detecting and avoiding pollution; familiarization with pollution control standards, both statutory and contractual; the installation and care of facilities for environmental protection (vegetative covers, etc.); and the use and care of equipment and instruments required for monitoring purposes to ensure adequate and continuous environmental protection and pollution control. Recognition and protection of archaeological sites and artifacts shall also be discussed. All Contractor personnel shall be encouraged to minimize the disturbance of natural features in the vicinity of the work site and to avoid causing unsightly conditions with trash and construction debris.

### 3.7 LIST OF ATTACHMENTS

ATTACHMENT 1 - NC DIVISION OF WATER QUALITY, WATER QUALITY CERTIFICATION

ATTACHMENT 2 - NC DIVISION OF COASTAL MANAGEMENT LETTER (CONCURRING WITH OUR CONSISTENCY DETERMINATION)

**ATTACHMENT 3 - PROTOCOL FOR COLLECTING TISSUE FROM DEAD TURTLES FOR GENETIC ANALYSIS**

-- End of Section --

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# **ATTACHMENT 3**

## **PROTOCOL FOR COLLECTION TISSUE FROM DEAD TURTLES FOR GENETIC ANALYSIS**

(Revised by Amendment No. 0005)

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## SECTION 02325

**DREDGING AND BEACH-FILL WORK**

## PART 1 GENERAL

## 1.1 DESCRIPTION OF WORK

(a) The work consists of furnishing plant, labor, materials, and equipment to perform **"Unclassified Excavation"** and associated work as required by these specifications and the schedules and drawings forming parts thereof, for Wilmington Harbor, NC 96 ACT Clean Sweep, Horseshoe Shoal Channel Sta. 00+00 thru Baldhead Shoal Channel Sta 270+00.

(b) The depth, bottom widths and lengths to be dredged are shown on the drawings. Before dredge surveys will be performed by the Government to represent actual bottom conditions as work commences in each acceptance section. The depth, bottom widths and lengths to be dredged are based on the bottom conditions existing on the date of the contract survey and are subject to change based on the bottom conditions at the time of the before dredge survey.

(c) **Materials to be dredged in Reach 3 of Baldhead Shoal Channel will be disposed of in specified disposal areas.**

(d) **If Optional Bid Item A or B is exercised, the work will include placing beach quality sand along the area of beach on Baldhead Island South and constructing the beach fill sections as shown on the plans along the length of beach as identified on the plans. Dredged material not considered suitable for beach fill will be disposed of in accordance with this section of the specifications.**

## 1.2 WORK COVERED BY CONTRACT PRICE

The contract price per cubic yard for **"Unclassified Excavation"** as listed in the BIDDING SCHEDULE shall include the cost of all plant, material, supplies, labor, and incidental expenses in connection with the excavating, transporting, disposal in specified disposal areas, and placing the beach fill material; temporary safety fencing, temporary warning signs, all diking, embankments, temporary bulkheading needed for control and confining the material and discharge fluid; surveys for the layout and control of the dredging work and for the beach fill work and disposal area surveys described in SECTION 01100: SUPPLEMENTARY SPECIAL CONTRACT REQUIREMENTS, paragraph, BEACH SURVEYS AND SURVEY PERSONNEL, repairs, and its final inspection and acceptance. The Contractor shall be required to place the beach fill in accordance with the drawings.

(a) The contract price per cubic yard for **"Unclassified Excavation"** includes the cost of removal and disposal of all dredged material. Included is cost for disposal of unsuitable material for beach fill into specified disposal area.

(b) The contract price per cubic yard for **"Unclassified Excavation"** includes all costs associated with labor, equipment, and materials required for proper placement of dredged material in accordance with these specifications until dredging operations have been completed.

(c) All costs associated with the turtle observers, shortnose sturgeon observers, marine mammal observers, including room and board throughout the entire project, shall be included in the contract price per cubic yard for dredging.

(d) The lump sum for mobilization and demobilization shall include all costs associated with the operations.

### 1.3 ORDER OF WORK

#### 1.3.1 Dredging

If the work is accomplished by pipeline dredge or mechanical dredge (clamshell, dragline, or dipper), the Contractor shall begin work at one end of acceptance section and proceed to the opposite end of the work area. The Contractor shall not work in more than 3 adjoining acceptance sections at any given time. Before proceeding to an additional adjoining acceptance section, work must be completed to the full project depth within at least one of the three previous adjoining acceptance sections.

If the work is to be accomplished by hopper dredge, the Contractor shall submit a dredging plan to the Contracting officer for approval prior to commencement of dredging. The dredging plan shall include an order of work which begins at one end of acceptance section and proceeds to the opposite end of the work area. The Contractor shall not work in more than 4 adjoining acceptance sections at any given time. Before proceeding to an additional adjoining acceptance section, work must be completed to the full project depth within at least one of the four previous adjoining acceptance sections.

If the work is accomplished by a combination of hopper dredge and other types of dredging equipment (pipeline dredge or mechanical dredge), the Contractor shall submit a dredging plan to the Contracting Officer for approval prior to commencement of dredging. The dredging plan shall include an order of work where each piece of dredging equipment completes acceptance sections in an orderly manner progressing in one direction. Work by hopper dredge shall not occur in more than 4 adjoining acceptance sections at any given time and work by other dredging equipment shall not occur in more than 3 adjoining acceptance sections at any given time. For hopper dredge work, before proceeding to an additional adjoining acceptance section, work must be completed to the full project depth within at least one of the four previous adjoining acceptance sections. For other types of dredging equipment, before proceeding to an additional adjoining acceptance section, work must be completed to the full project depth within at least one of the three previous adjoining acceptance sections.

### 1.4 CHARACTER OF MATERIALS

The material to be removed is predominantly composed of shoaled material which has occurred since the various areas were last dredged. The shoaled materials are believed to consist primarily of sand, hard sand, silt and clay, **but may also include wood, metal, and other sunken debris that may have become lodged in the channel. The new work is believed to consist primarily of sand, dense sand, silt, clay, wood, cemented sand, silt and clay, and sedimentary rock with high compressive strength. For definitions of materials, see Geotechnical Manual, DM 1110-1-1, latest edition.** See attached (drilling) logs and laboratory data. See also site specific information paragraphs of this section and reference drawings.

### 1.5 NOTICES

(a) The Contractor shall give the Contracting Officer five (5) days advance written notice before commencing work.

(b) The Contractor shall be responsible for requesting Government before-dredging surveys, in writing five (5) days prior to beginning work in an acceptance section.

(c) The Contractor shall also be responsible for requesting the Government after-dredging surveys. The Government will conduct after-dredging surveys, within three (3) working days of a written request from the Contractor.

### 1.6 NAVIGATION AIDS

There may be aids to navigation within the project boundaries. Some, or all, of such aids to navigation may need to be removed for the accomplishment of the contract work. It is the responsibility of the Contractor to timely determine any need for moving of aids to navigation and to coordinate with the U.S. Coast Guard (USCG) and any other responsible parties to accomplish any needed movement. Any impacts to the work due to the inability of the Contractor to accomplish any needed movement of aids to navigation will not be the responsibility of the United States Government or of the Contracting Officer.

### 1.7 MISPLACED MATERIAL

Any material, including material lost through leaks in the pipelines, that is deposited or allowed to flow elsewhere than in places designated or approved by the Contracting Officer will be considered as misplaced material. If, in the opinion of the Contracting Officer, this misplaced material will in any way be a hazard to navigation, to normal activities of the public, or to the environment, the Contractor shall remove such misplaced material and deposit it where directed at the Contractor's expense. **Misplaced material includes dredged material deposited outside the specified disposal areas, any dredged material mounded higher than elevation limits of disposal areas, and any dredged material placed outside the tolerances as specified for the beach fill sections.**

### 1.8 SUBMITTALS

The following shall be submitted to the Contracting officer in accordance with Section 01330 SUBMITTAL PROCEDURES:

- a. Disposal Operation Plan; G.
- b. Turtle deflector device design (required if hopper dredge is to be used to accomplish the work); G
- c. Inflow basket or screen design (required if hopper dredge is to be used to accomplish the work); G
- d. Dredge material disposal plan
- e. Ocean disposal verification data
- f. Dredging Plan

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 DREDGE POSITIONING SYSTEM

Each dredge shall be equipped with an electronic positioning system, capable of positioning the dredge in the channel with accuracies equal to contract payment surveys (Class 1), as specified in the U.S. Army Corps of Engineers, latest Publication Number EM 1110-2-1003, Title: Engineering and Design - Hydrographic Surveying. This positioning system shall be established, operated, and maintained by the Contractor during the entire period of the contract. The positioning system shall be used to precisely locate the dredge and shall be capable of displaying and recording the dredge's location in an acceptable coordinate system which can be related to, or is directly based on, the North Carolina Lambert State Plane Coordinate System. Navigation channel control, and shore station control, if required, will be provided to the Contractor in the same North Carolina Coordinate System prior to the commencement of work. It shall be the responsibility of the Contractor to have the positioning/navigation system reviewed and inspected by the Contracting Officer's Representative prior to the commencement of work.

3.2 QUANTITIES SUMMARY

The quantities listed in the table below include the volumes present at the time of the surveys indicated in the contract drawings, plus anticipated shoaling before dredging begins.

<u>Acceptance Sections</u>	<u>Total Cubic Yards to Required Depth</u>	<u>Total Including Allowable Overdepth</u>
Horseshoe Shoal <sup>1</sup>	15,000 <sup>(42')</sup>	30,000 <sup>(44')</sup>
Snow's Marsh <sup>1</sup>	30,000 <sup>(42')</sup>	20,000 <sup>(44')</sup>
Lower Swash <sup>1</sup>	5,000 <sup>(42')</sup>	30,000 <sup>(44')</sup>
<b>Battery Island<sup>1</sup></b>	15,000 <sup>(44')</sup>	30,000 <sup>(46')</sup>
<b>Southport<sup>1</sup></b>	10,000 <sup>(44')</sup>	25,000 <sup>(46')</sup>
<b>Baldhead Caswell<sup>1</sup></b>	10,000 <sup>(44')</sup>	20,000 <sup>(46')</sup>

<u>Acceptance Sections</u>	<u>Total Cubic Yards to Required Depth</u>	<u>Total Including Allowable Overdepth</u>
Smith Island <sup>1</sup>	300,000 <sup>(44')</sup>	430,000 <sup>(46')</sup>
Baldhead Shoal <sup>1</sup> 00+00 to 45+00	300,000 <sup>(44')</sup>	400,000 <sup>(46')</sup>
Baldhead Shoal <sup>1</sup> 45+00 to 88+00	100,000 <sup>(44')</sup>	250,000 <sup>(46')</sup>
Baldhead Shoal <sup>2</sup> 88+00 to 160+00	700,000 <sup>(44')</sup>	1,000,000 <sup>(46')</sup>
Baldhead Shoal <sup>3</sup> 160+00 to 217+00	600,000 <sup>(45')</sup>	800,000 <sup>(47')</sup>
Baldhead Shoal <sup>3</sup> 217+00 to 270+00	50,000 <sup>(44')</sup>	200,000 <sup>(46')</sup>

**NOTE:**

\*Acceptance sections for the channels that are borrow areas for the beach fill shall be divided appropriately to facilitate completion of the beach fill acceptance sections. See Section 01100, Final Examination and Acceptance of Beach Fill.

**NOTE:**

- <sup>1</sup>Disposal to Baldhead Island South Beach (unsuitable material to existing Baldhead Shoal Channel or Zones A, B, or C of old ODMDS) (Options A & B)
- <sup>2</sup>Disposal to Existing Baldhead Shoal Channel or Old ODMDS, Zones A or B (Base Bid)
- <sup>3</sup>Disposal to old ODMDS (After filling Zones A and B, use Zone C with Contracting Officer approval) (Base Bid)

**3.3 ENVIRONMENTAL WINDOWS**

See SECTION 01355, ENVIRONMENTAL PROTECTION, for environmental windows.

**3.4 LOCAL OFFICE**

The Contractor shall maintain a land based office in the immediate vicinity of the project. This office shall be equipped with at least one operable telephone and fax machine, which provides both local and long distance service. The number for this equipment shall be provided to the Contracting Officer's Representative during the preconstruction conference, and the telephone shall be monitored and answered by contractor personnel during working hours.

### 3.5 OVERDEPTH AND SIDE SLOPES

#### 3.5.1 Overdepth

This contract allows overdepth dredging. No payment will be made for any material that is removed from below the allowable overdepth or outside of the indicated side-slopes.

#### 3.5.2 Side-Slopes

Material actually removed within limits approved by the Contracting officer, leaving final side-slopes as indicated on drawings. Flatter slopes will not be paid for, whether accomplished by dredging the original position or the space below the pay slope plane and allowing up slope materials to fall into the cut.

#### 3.5.3 Excessive Dredging

Material taken from beyond the limits as extended in provision, side-slopes above, will be deducted from the total amount dredged as excessive dredging and will not be credited.

### 3.6 REQUIRED TRANSPORTATION AND PIPELINE ROUTE

For surface vessel transportation of dredged material to the **specified disposal areas** and subsequent return trips to the work site, the vessel(s) shall be limited to the dredging limits and to the designated areas shown on the drawings. Pipeline routes to the **specified disposal areas** shall be restricted to the same areas required for surface vessel transportation.

### 3.7 PLACEMENT OF MATERIALS FOR BEACH FILL

#### 3.7.1 General

##### 3.7.1.1 Placement

The beach fill material shall be placed by discharging the material directly into the fill section from the dredge discharge pipe or by stockpiling the dredged material on the beach, in an area approved by the Contracting Officer, and hauling the material by wheeled or tracked earth moving equipment into the fill section. A combination of the above two methods may also be used. Except as provided for below, the dredged material shall be placed at the location and within the prescribed tolerances of the design sections as shown on the plans and in accordance with subparagraph, Tolerances, unless otherwise approved by the Contracting Officer. No material shall be placed unless an inspector appointed by the Contracting officer is present at the time, or has given his permission for the Contractor to proceed. The contractor shall be required to re-distribute any material that is deposited in places not designated or approved by the Contracting Officer. The Contractor shall be required to remove such misplaced material and deposit it where directed at his own expense. Avoid use of equipment to distribute material in close vicinity of dune crossovers; hand place and hand distribute material around crossovers.

##### 3.7.1.2 Materials

The dredging shall be accomplished so that the most suitable material available for beach fill is placed within the prescribed section. This

material should be predominantly of sand (SP, SP-SM, SM) grain size with no more than 10% (by weight) silt and clay (MH, ML, CH, OH, OL) material present. Material with more than 10% (by weight) silt and clay and organic materials and gravel, cobbles, and boulders are unsuitable for beach placement. The limits of the sand have been indicated on the contract plans. It is anticipated that the material within the entire channel prism and to the depth as noted on the plans, including the side slopes, contains suitable material for beach fill. Should the dredge encounter materials not suitable for placement on the beach, **the Contractor shall dispose of the material within existing Baldhead Shoal Disposal Area or Zones A, B, or C of the old ODMDS.**

### 3.7.1.3 Objectional Matter

Objectionable matter such as stumps, roots, logs, or other organic or inorganic debris having a diameter of 2 inches or more and/or a length of 1 foot or more, or accumulations of small vegetative growth or debris shall be collected and placed in a disposal area furnished by the Contractor and approved by the Contracting Officer as the work progresses. Objectionable matter such as large clay balls shall be broken up and dispersed and/or mixed in with the beach fill section by scarifying or an appropriate method approved by the Contracting Officer.

### 3.7.2 Beach Fill

#### 3.7.2.1 Discharge Points

When the fill material is placed by discharging the material in a controlled manner directly into the fill section, the dredge discharge points shall be manipulated and controlled by the Contractor in such a manner to minimize the loss of material into the surf zone.

#### 3.7.2.2 Longitudinal Dikes

For beach fill material placed by discharging the material directly into the fill section, the Contractor shall provide temporary longitudinal dikes and spreader and pocket pipe as necessary to prevent gullying and erosion of the beach and fill and to retain the fill on the beach and within the limits of the fill cross section. Longitudinal dikes shall initially be 300 feet long in advance of filling operations. Shorter lengths may be subsequently used if approved by the Contracting Officer. Groins, bulkheads, revetments, piers, storm drain outfall pipes, walkover structures, and other structures within the fill section shall be protected by the Contractor to prevent damage thereof by the Contractor's operations. Any damages to any of the above items resulting from the Contractor's activities shall be at the Contractor's expense. If dredged material is to be stockpiled on the beach for hauling with wheeled or tracked equipment, the Contractor shall provide dikes, embankments, temporary bulkheading and spillways to confine the material within the approved stockpile areas. For stockpile areas, the material shall be confined shoreward of the seaward crest of the new top of berm elevation contour as indicated on the drawings for the particular beach fill site.

#### 3.7.2.3 Fill Adjustments

It is the intent of the Contracting Officer to control the yardage of the fill material along the beaches to that which is needed to construct the applicable fill sections for the entire lengths of the beaches as shown on the drawings by varying the width of the top of the particular berm for

each beach fill site. The distribution of the yardage along the beach, which is based on the design cross sections, the latest survey as of the date of these specifications, and the amount of material removed from the channel is tabulated on Table 1. Note that the amount of material retained on the beach is assumed to be 20% less than the volume of material removed from the channel. Periodic checks of the difference between the volume of material removed from the channel prisms and the amount of material retained on the beach will be made during the prosecution of the work. If the difference is found to be different from the assumed 20%, **appropriate** adjustments will be made in the retention volumes given in Table 1. The width of the top of the berm is shown on the drawings and is based on the quantity of material to be placed and an assumed slope of the placed material of 1V:15H seaward of the crest of the berm to the point of intersection with the existing bottom. **The actual width of the berm needed to achieve the volumetric distribution given in Table 1 will be based on Government interpretation of the channel and beach profile surveys and the actual slope that the material assumes during placement.** The Contractor shall maintain the fill section in a satisfactory condition at all times until final completion and acceptance of the work as specified in SECTION 01100: SUPPLEMENTARY SPECIAL CONTRACT REQUIREMENTS, paragraph, FINAL EXAMINATION AND ACCEPTANCE OF BEACH FILL.

#### 3.7.2.4 Temporary Safety Fencing

**Before any pumping or discharging of dredged material on the beach can occur, the Contractor shall furnish and erect temporary safety fencing at a distance of 500 feet on either side of the discharge point for the beach fill placement. The temporary safety fencing shall totally encompass the general area around the discharge point for beach fill and shall be moved along the beach in conjunction with the location of the discharge point. The Contractor shall provide a 6-foot wide travel way between the dunes and the fence to allow beachgoers to safety walk around the work area. The intent of the safety fencing is to restrict and limit the public access to and around the general area of the discharge point. The temporary safety fencing shall be a high visibility orange colored, high density polyethylene grid or approved equal, a minimum of 42 inches high, supported and tightly secured to steel posts located on maximum 10 foot centers. The Contractor shall assign a person to monitor and patrol the temporary safety fence during any pumping operations to insure that the public is kept out of and away from the area where the pumping operations is occurring. The safety fencing shall be maintained by the Contractor during the life of the contract and, upon completion of the beach disposal work, shall become the property of the Contractor and shall be removed from the work site. No direct payment will be made for the temporary safety fencing.**

#### 3.7.2.5 Temporary Warning Signs

Before any pumping or discharging of beach fill material can occur, the Contractor shall furnish and erect temporary warning signs along and around the outside perimeter of the temporary safety fencing. One temporary warning sign shall be placed along each side of the temporary safety fencing and for each direction accessible to the public. The temporary warning sign shall be moved along the beach in conjunction with the location of the discharge point and the temporary safety fencing. The intent of the warning signs is to warn the public of the hazards and danger of the beach filling operations, construction equipment, and the discharge point. The signs shall be fabricated using 3/4", Douglas Fir, Exterior Marine-Grade, HDO plywood with 4"x4"x12' treated, No. 2 Southern Pine posts installed in 3 feet deep by 12-inch diameter holes backfilled with

compacted soil. Sign faces shall be non-reflective vinyl. All letters and logos shall be die-cut or computer-cut. Letter and logo sizes and application to the plywood panel shall conform to the graphic format shown in the U.S. Army Corps of Engineers Signs Standard Manual. The Communications Red panel on the left side of the construction project sign, with Corps logo (reverse version), shall be screen printed onto the white background. Copies of the sign standards manual can be obtained from the Contracting Officer for specific fabrication and installation requirements.

Legends and logos for the temporary warning signs shall be as shown on Attachment 3. No direct payment will be made for the warning signs. The warning signs shall be maintained by the Contractor during the life of the contract and, upon completion and acceptance of the beach fill work, shall become the property of the Contractor and shall be removed from the work site.

### 3.7.2.6 Construction Stakes

The Contractor shall remove in their entirety all construction stakes, ranges, and other devices utilized to delineate and construct the beach fill section. All fill grade stakes shall be steel pipe approved by the Contracting Officer which shall be completely removed prior to final acceptance of the beach fill. The Contractor shall be responsible for locating and removing such stakes using a magnetometer or other suitable means at no additional expense to the Government.

### 3.7.3 Pipeline Route

#### 3.7.3.1 General

The dredged material to be placed on the beaches must be transported over routes that may include public property, navigable and unnavigable water, and under fishing piers. Local authorities will acquire and furnish all permits, rights-of-way or easements required for the areas shown or specified in which the beach fill is to be placed. Prior to installing the pipeline, the Contractor shall devise a specific pipeline route that will be used and obtain the written approval for the specific pipeline route from the Contracting Officer. The pipeline route shall be devised so as to minimize adverse impacts on vegetation, wildlife, dunes and beach traffic. No road crossings are anticipated for this contract. No pipeline will be placed or stored on the beach seaward of the dune prior to November 16, 2003; except, a submerged pipeline may be landed perpendicular to the beach prior to that date. **All construction activities on the beach must be completed by April 30. This includes disposal, grading, and pipe removal.** No work or equipment will be allowed on the beach at any time within 50 feet of a sea turtle nest that has not hatched. All hatching will occur by November 16, 2003. Piping may be stored landward of the dunes in public access with approval of city officials.

#### 3.7.3.2 Dune Crossings

It is the intent of these specifications to minimize the damage to the dunes and vegetation thereon. The Contractor shall exercise extreme care in placing the pipeline across the dunes to the beach, should it become necessary for the pipeline to cross existing dunes. The designated routes shall be followed to the extent practicable and in no case will deviations be made without the written approval of the Contracting Officer. The Contractor will not be allowed to grade, or otherwise disturb the natural dunes. Equipment used in placing and removal of the pipeline shall meet the

approval of the Contracting Officer.

Any degradation of the dune area caused by the Contractor's operation shall be restored as near as practicable to the natural condition.

#### 3.7.3.3 Pedestrian Access

The pipeline shall be covered with sand at the Public Beach Access points in each of the completed sections in such a manner so as to allow beach users unobstructed access to the completed beach fill section. The pedestrian access points shall be removed and graded to the final cross section upon the completion of the beach fill.

#### 3.7.3.4 Pipeline Leakage

A tight dredge discharge pipeline shall be maintained along all sections of the pipeline to prevent spilling of dredged effluent outside of the beach fill section or stockpiling area. To minimize damage caused by leaks in the pipeline on the land section of the line, the Contractor shall provide a periodic patrol of the pipeline. A minimum of 12 daily inspections shall be made by the Contractor during disposal operations (four (4) inspections each 8-hour shift). The Contractor shall burlap and strap weld all joints of shore sections of pipeline. When significant leaks occur in the pipe line which can cause erosion of the existing beach or a completed beach fill section and/or appears to be a safety hazard to the public, the Contractor shall immediately cease pumping operations until the pipeline is repaired.

#### 3.7.3.5 Booster Pumps

In the event booster pumps are required along the dredge pipeline, they shall be located so as to minimize the disturbance of residents. The location of all booster pumps shall be approved in advance by the Contracting Officer.

#### 3.7.4 Tolerances

A vertical tolerance of five-tenths (0.5) of one foot above and five-tenths (0.5) of one foot below the prescribed berm grade and slopes, at and above the top of berm elevation line as shown on the drawings, will be permitted in the finished surface. Below the top of berm elevation line, the fill material will be allowed to assume its natural slope as directed by wave and water level conditions. Any material placed outside the prescribed tolerances may be left in place at the discretion of the Contracting officer; however, the Contractor will not be paid for the material placed outside the prescribed tolerances. The Contractor shall be required to redistribute and/or reshape any material placed outside the prescribed tolerances to conform to the requirements of the contract.

#### 3.8 SUBMERGED PIPELINE

In the event the Contractor elects to submerge his pipeline, the location of the submerged pipeline shall be marked with signs, buoys, flags, and lights conforming to U.S. Coast Guard regulations and to the complete satisfaction of the Contracting Officer.

#### 3.9 DREDGING LIMITS

All dredging shall be confined to within the area and depth limits shown.

Dredging shall be regulated and controlled so that bank sloughing in the inlet and borrow area does not occur beyond the limiting lines shown on the drawings. Materials taken from beyond these limits will be deducted from the total amount.

### 3.10 COMMUNICATIONS

The Contractor shall furnish and maintain a radiotelephone and a cellular phone on the dredge(s) throughout the period of the contract. The plant will not be allowed to begin work until the VHF marine band radio is installed and in good working order and a properly operating cellular phone is on board. The radiotelephone shall be capable of operation from the dredge's main control station and capable of transmitting and receiving on a frequency or frequencies within the 156-162 megahertz band using the classes of emissions designated by the Federal Communications Commission. Continuous radio contact shall be maintained between the dredge control room and the inspectors of the beach fill areas as well as the personnel patrolling the pipeline.

### 3.11 MEASUREMENT AND PAYMENT

#### 3.11.1 General

The total volume of all material removed and to be paid for under this contract will be measured by the cubic yards in place, by computing the volume between the bottom surface shown by soundings of a survey before dredging each acceptance section and the bottom surface shown by the soundings of a survey made as soon as practicable after completion of each acceptance section. The calculations will exclude any volume of material removed from beyond the limits of the side-slopes and/or below the allowable overdepth and will be further reduced by the volume of any misplaced material. All pay quantities shall be determined from before and after dredging surveys conducted by the Government. All work connected with excavation, transportation, placing, and shaping of the beach fill, controlling and confining the dredge effluent, surveys for layout and control of the dredging work surveys described in SECTION 01100: SUPPLEMENTARY SPECIAL CONTRACT REQUIREMENTS, paragraph, BEACH SURVEYS AND SURVEY PERSONNEL, and repairs and inspections shall be included in the contract price for **Unclassified Excavation**.

#### 3.11.2 Contract Drawings

The drawings referred to in SECTION 01100, paragraph, CONTRACT DRAWINGS AND SPECIFICATIONS, are believed to represent the conditions existing on the dates of survey. The bottom conditions will be determined by before dredging surveys of each acceptance section prior to commencement of dredging and new maps will be furnished to the Contractor. Determination of quantities removed and the deductions made therefrom to determine quantities by in-place measurement to be paid for in the areas specified, after having once been made, will not be reopened, except on evidence of collusion, fraud, or obvious error.

#### 3.11.3 Payments

Payment for **Unclassified Excavation** shall be made upon acceptance of each channel dredging acceptance section to required template. See Section 02325, Quantities Summary, describing dredging acceptance sections. In addition, no payment for dredging with beach fill disposal will be made until final acceptance of the associated beach fill acceptance section in

accordance with the contract. See Section 01100, Final Examination and Acceptance of Beach Fill, for beach fill completion and final acceptance requirements. For purposes of measurement and payment for a particular beach fill acceptance section, after dredge hydro surveys of the channel associated with the beach fill acceptance section will be performed when the contractor has completed the beach fill placement and prior to beach tilling.

#### 3.11.4 Method of Survey

Class 1 Hydrographic surveys with associated tidal control, as specified in the U.S. Army Corps of Engineers, latest Publication Number (EM 1110-2-1003, Engineering and Design - Hydrographic Surveying), will be accomplished by the Government with the use an automated hydrographic surveying system installed aboard one of the Wilmington District's survey vessels. Horizontal location of survey lines and depth sounding points will be determined by the use of Real Time Kinematic (RTK) differentially corrected GPS (DGPS). Depth soundings as depicted on the Baldhead Shoal Channel plans were obtained using a single beam echo sounder/digitizing system operating at 28 kHz. The echo sounder system will be calibrated at the job site **using** the "bar check" method and verified for accuracy twice daily. Position and depth data will be collected and stored on magnetic media for subsequent processing by the Government for map presentation and quantity calculations.

#### 3.11.5 Survey Lines

Data will be secured by running survey lines parallel to the longitudinal axis of the channel. A sufficient number of lines will be run to assure good coverage of the bottom. A minimum of two (2) lines will be run within the grade slopes. If longitudinal lines are run, additional lines shall be required along the side slopes. The after dredging surveys will be performed in the same manner as the before dredging surveys. Multi-beam surveys may, however, also be used in the acceptance process. Weather permitting, before and after dredge surveys will be made during the same tidal stage.

#### 3.11.6 Misplaced Material

No payment shall be made for any material placed outside of the tolerances of the typical beach section unless otherwise authorized. The Contractor shall be required to redistribute any misplaced material in the beach fill placement areas in order to conform with the typical beach section and tolerances given in the contract and shall be accomplished at his own expense.

#### 3.12 COMPLIANCE WITH APPLICABLE NAVIGATION RULES AND REGULATIONS, MARINE EQUIPMENT

The Contractor shall ascertain that all vessels used in performance of this contract are commanded, equipped, navigated and/or operated in strict compliance with the general regulations of the Department of the Army and the U.S. Coast Guard, including but not limited to, applicable safety, environmental, and navigational rules and regulations in the code of Federal Regulations (CFR) Parts 33 and 46.

Installation (i.e., pipeline, pipeline risers and/or booster stations) as may be placed by the Contractor on or over the seabed of the work area are obstructions or structures in accordance with Title 33 CFR SUBPART 67.01.

Such installations or portions thereof, are subject to applicable regulations set forth in Title 33 CFR, parts 64, 66 and 67. The responsibility for notifying the Commander, Fifth Coast Guard District, per Title 33 CFR SUBPART 67.40 and the responsibility of securing necessary installation approvals therefrom, rests with the Contractor. The further responsibility for maintaining and operating his/her job site installation and vessels in accordance with applicable laws also rests with the Contractor.

The Government will not undertake to keep the area free from vessels or other obstructions, except to the extent of such regulations, if any, as may be prescribed by the Secretary of the Army, in accordance with the provisions of Section 7 of the River and Harbor Act approved 8 August 1917. The Contractor will be required to conduct the work in such a manner as to obstruct navigation as little as possible, and in case the Contractor's plant so obstructs navigation as to make it difficult or endanger the passage of vessels, said plant shall be promptly moved on the approach of any vessel to such an extent as may be necessary to afford a practicable passage. Upon completion of the work the Contractor shall promptly remove his plant, including ranges, buoys, piles and other markers placed by him under the contract in navigable waters or on the shore.

### 3.13 FLOATING PLANT INSPECTION AND CERTIFICATION

All floating plant regulated by the U.S. Coast Guard (USCG) shall have current inspections and certificates issued by the USCG before being placed in service and a copy shall be posted in a public area on board the vessel.

A copy of any USCG Form 835 issued to the vessel in the preceding year shall be onboard the vessel and shall be available to the Contracting officer upon request.

All dredges and quarter boats not subject to USCG inspection and certification or not having a current American Bureau of Shipping (ABS) classification shall be inspected in the working mode annually by a marine surveyor accredited by the National Association of Marine Surveyors (NAMS) or the Society of Accredited Marine Surveyors (SAMS) and having at least five years experience in commercial marine plant and equipment. All other plant shall be inspected annually by a qualified person. The inspection shall be documented, and a copy of the most recent inspection report shall be posted in a public area on board the vessel and a copy shall be furnished to the Contracting officer upon request. The inspection shall be appropriate for the intended use of the plant and shall, as a minimum, evaluate structural integrity and compliance with NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft.

The hydraulic pipeline dredge shall be ocean certified. The Contractor shall provide a tug at the work site for the duration of the contract capable of moving the hydraulic pipeline dredge to a safe area in the event of severe weather.

### 3.14 REPORTING REQUIREMENT

The Contractor will be required to prepare daily a "Report of Operations" (Attachment 3 and Attachment 4 of Section 01451) and furnish copies thereof to the Contracting Officer. The contractor shall furnish daily a copy or copies of any Contractor forms or operational reports he routinely requires to be submitted by his field personnel.

Beach survey field notes and computations shall be furnished to the Contracting Officer in advance of placement of the beachfill so that control of the quantities and adjustment to the fill section may be made if necessary.

### 3.15 FENDER TIRES

All fender tires used on Contractor dredging equipment or vessels shall be permanently marked by the Contractor with the company name and equipment plant name. All fender tires shall be securely attached to prevent them from falling overboard. The Contractor shall be responsible for damages to fishing nets or other claims that are due to any loss of equipment such as fenders, cables, anchors, pipe, etc.

### 3.16 HOPPER DREDGE EQUIPMENT

Hopper dredge drag heads shall be equipped with rigid sea turtle deflectors that are rigidly attached. No dredging shall be performed by a hopper dredge without a turtle deflector device that has been approved by the Contracting Officer.

#### 3.16.1 Deflector Design

The leading vee-shaped portion of the deflector shall have an included angle of less than 90 degrees. Internal reinforcement shall be installed in the deflector to prevent structural failure of the device. The leading edge of the deflector shall be designed to have a plowing effect of at least 6" depth when the drag head is being operated. Appropriate instrumentation or indicator shall be used and kept in proper calibration to insure the critical "approach angle."

(Information Only Note: The design "approach angle" or the angle of lower drag head pipe relative to the average sediment plane is very important to the proper operation of a deflector. If the lower drag head pipe angle in actual dredging conditions varies tremendously from the design angle of approach used in the development of the deflector, the 6" plowing effect does not occur. Therefore, every effort should be made to insure this design "approach angle" is maintained with the lower drag pipe.)

If adjustable depth deflectors are installed, they shall be rigidly attached to the drag head using either a hinged aft attachment point or an aft trunnion attachment point in association with an adjustable pin front attachment point or cable front attachment point with a stop set to obtain the 6" plowing effect. This arrangement allows fine-tuning the 6" plowing effect for varying depths. After the deflector is properly adjusted there shall be NO openings between the deflector and the drag head that are more than 4" by 4".

#### 3.16.2 Inflow Basket Design

The Contractor shall install baskets or screening over the hopper inflow(s) with no greater than 4" x 4" openings. The method selected shall depend on the construction of the dredge used and shall be approved by the Contracting Officer's Representative prior to commencement of dredging. The screening shall provide 100% screening of the hopper inflow(s). The screens and/or baskets shall remain in place throughout the work.

The Contractor shall install and maintain floodlights suitable for illumination of the baskets or screening to allow the observer to safely

monitor the hopper basket(s) during non-daylight hours or other periods of poor visibility. Safe access shall be provided to the inflow baskets or screens to allow the observer to inspect for turtles and sturgeons, or parts thereof, and clean the baskets or screens for the next loading cycle. The inflow screens shall be maintained in operational condition throughout the period of their required use.

### 3.16.3 Hopper Dredge Operation

The Contractor shall operate the hopper dredge to minimize the possibility of taking sea turtles.

When initiating dredging, suction through the dragheads shall be allowed just long enough to prime the pumps, then the dragheads must be placed firmly on the bottom. When lifting the dragheads from the bottom, suction through the dragheads shall be allowed just long enough to clear the lines, and then must cease. Pumping water through the dragheads shall cease while maneuvering or during travel to/from the disposal area.

(Information Only Note: Optimal suction pipe densities and velocities occur when the deflector is operated properly. If the required dredging section includes compacted fine sands or stiff clays, a properly configured arrangement of teeth may enhance dredge efficiency which reduces total dredging hours and "turtle takes." The operation of a drag head with teeth must be monitored for each dredged section to insure that excessive material is not forced into the suction line. When excess high-density material enters the suction line, suction velocities drop to extremely low levels causing conditions for plugging of the suction pipe. Dredge operators should configure and operate their equipment to eliminate all low level suction velocities. Pipe plugging in the past was easily corrected when low suction velocities occurred by raising the drag head off the bottom until the suction velocities increased to an appropriate level. Arrangements of teeth and/or the reconfiguration of teeth should be made during the dredging process to optimize the suction velocities.)

Raising the drag head off the bottom to increase suction velocities is not acceptable. The primary adjustment for providing additional mixing water to the suction line should be through water ports. To insure that suction velocities do not drop below appropriate levels, the Contractor's personnel shall monitor production meters throughout the job and adjust primarily the number and opening sizes of water ports. Water port openings on top of the drag head or on raised stand pipes above the drag head shall be screened before they are utilized on the dredging project. If a dredge section includes sandy shoals on one end of a tract line and mud sediments on the other end of the tract line, the Contractor shall adjust the equipment to eliminate drag head pick-ups to clear the suction line.

Near the completion of each payment section, the Contractor shall perform sufficient surveys to accurately depict those portions of the acceptance section requiring cleanup. The Contractor shall keep the drag head buried a minimum of 6 inches in the sediment at all times. Although the over depth prism is not the required dredging prism, the Contractor shall achieve the required prism by removing the material from the allowable over depth prism.

During turning operations the pumps must either be shut off or reduced in speed to the point where no suction velocity or vacuum exists.

These operational procedures are intended to stress the importance of balancing the suction pipe densities and velocities in order to keep from

taking sea turtles.

The Contractor must comply with all requirements of this specification and the Contractor's accepted Environmental Protection Plan. The contents of this specification and the Contractor's Environmental Protection Plan shall be shared with all applicable crew members of the hopper dredge.

### 3.17 WATER POLLUTION CONTROL

#### 3.17.1 Contamination of Water

The Contractor shall not pollute the channels or beach fill area with paints, fuels, oil, bitumens, calcium chloride, insecticides, herbicides, or any other substance which may be considered harmful to fish, shellfish, or wildlife. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, County, and municipal laws concerning pollution of rivers and streams and health protection of shellfish, fish, and domestic animals.

#### 3.17.2 Disposal of Materials

The methods and locations of disposal of materials, wastes, effluents, trash, garbage, oil, grease, chemicals, etc., shall be such that harmful agents will not enter the waterway, ocean, and sound by erosion and shall be subject to approval by the Contracting Officer.

### 3.18 EMERGENCY DUMPS

If a vessel experiences an emergency situation which causes a dumping of material outside of the designated disposal **areas**, the Contractor shall verbally notify the Contracting officer no later than the next work day. The Contractor must submit, in writing within two (2) days of the emergency dump, a statement detailing time of dump, location of dump, and reason dump occurred. Material that is misplaced due to an emergency dump situation is subject to removal by the Contractor at his own expense upon the request of the Contracting Officer.

### 3.19 DISPOSAL OF EXCAVATED MATERIAL

**(a) The material excavated shall be placed in the disposal area(s) as shown in Quantities Summary in this section.**

**(b) Old Wilmington Ocean Dredged Material Disposal Site.** Disposal of excavated material in the old Wilmington Ocean Dredged Material Disposal Site (ODMDS) shall be within the designated disposal zone **indicated in Quantities Summary in this section.** Disposal shall be conducted in such a manner that water above the dumped material will have a minimum clearance of **25 feet** at mean lower low water (MLLW). In order to maximize ODMDS capacity and minimize mounding of material, the dumps shall be scattered throughout the designated disposal zone and not placed repeatedly at one location. **Either Zones A or B shall be utilized until filled, after which Zone C may be utilized with approval from Contracting Officer.** The Contracting Officer can direct the placement of material within any portion of the disposal zone.

**(c) Existing Baldhead Shoal Channel disposal site.** Disposal in the existing Baldhead Shoal Channel shall occur seaward of station 140+00. Disposal shall be conducted to provide a minimum clearance as indicated below between stations as indicated.

Station	140+00 to 150+00	-30'MLLW
Station	150+00 to 165+00	-31'MLLW
Station	165+00 to 185+00	-34'MLLW
Station	185+00 to 195+00	-35'MLLW
Station	195+00 to 205+00	-36'MLLW
Station	205+00 to 220+00	-38'MLLW
Station	220+00 to end of channel	-40'MLLW

**No disposal shall occur in the existing Baldhead Shoal Channel before 1 December. In order to maximize ODMDS capacity and minimize mounding of material, the dumps shall be scattered throughout the channel.**

(d) Any material that is deposited other than in places designated or approved by the Contracting Officer will not be paid for, and the Contractor will be required to remove such misplaced material and deposit it where directed at his expense.

(e) Mechanical Dredging. Material shall be excavated by bucket and placed in scows and transported to the approved disposal area where the scows shall be unloaded. No screens are required. All scows shall be kept in good condition and coamings kept in good repair. Dumps scows shall have their pockets provided with proper doors or appliances to prevent leakage of material. All scows shall be equipped with a radio controlled dump mechanism.

(f) Hopper Dredge. Inflow baskets or screens over the hopper inflow(s) shall be maintained in operational condition throughout the period of work. Debris shall be cleaned from the baskets or screens and disposed of in accordance with subparagraph, Debris Disposal, below.

(g) All disposal vessels shall be equipped with draft measurement and recording devices. The draft of the vessels will be constantly updated throughout the entire cycle. The data will be transmitted by radio to the tug and simultaneously recorded and included in the Contractor's daily report.

**(h) All material must be released in the specified disposal areas.**

(i) Debris Disposal. The Contractor may encounter wood and other debris within the dredging limits. The wooden debris may consist of tree trunks, stumps, roots, and limbs. Debris is to be placed in a separate barge of conveyance and disposed of in a public or private upland disposal area. Bidders are expected to investigate the cost and availability of disposal areas and any restrictions associated with each, prior to submitting their bids. Any costs associated with disposal of debris is the responsibility of the Contractor and shall be included in the contract unit price for unclassified excavation.

### 3.20 TIDE DATA

#### 3.20.1 Real Time Kinematic (RTK) GPS

Real Time Kinematic (RTK) GPS will be used by the Corps of Engineers to determine real time water levels (tide corrections) in the Wilmington Harbor Project. If the Contractor desires to obtain these corrections, he will be responsible for providing navigation equipment capable of utilizing the transmitted signals from the Corps-owned RTK GPS base station at the

Oak Island Lighthouse located on Oak Island. Radio frequencies and information on the Corps-owned equipment can be obtained from Mr. Marc Reavis at (910 251-4489). Corps personnel will instruct the contractor as to the proper use of this system.

### 3.20.2 Kinematic Tidal Datum

A file listing the separations between the Reference Ellipsoid and the Chart Datum (Mean Lower Low Water) will be provided to the Contractor for entry into the hydrographic survey software. A Tidal Datum Diagram showing the relationship between NAVD 88 and Mean Lower Low Water will be provided upon request.

### 3.20.3 Non-Operational Reference Station

In the event that the reference station becomes non-operational, the Contractor shall contact Mr. Marc Reavis at the telephone number shown above. The Government will take measures to ensure correction of any problems with the GPS equipment.

## 3.21 SURFACE TRANSPORT OF DREDGED MATERIAL

a. Transportation of dredged material by barges and scows to the **specified disposal areas** will be allowed for this contract. All disposal vessels shall be equipped with draft and position measuring and recording devices. These instruments shall be kept in good working order. Vessel draft and vessel position data shall be obtained and recorded in accordance with paragraph, OCEAN DISPOSAL VERIFICATION.

b. All scows shall be kept in good condition and the coamings kept in good repair. All scows shall have their pockets provided with proper doors or appliances to prevent leakage of material. Failure to repair leaks will result in suspension of dredging. If suspension occurs, dredging will not be allowed to resume until the Contractor has promptly repaired the scow to the satisfaction of the Contracting Officer. Overflow of scows to obtain an economic load will be allowed. All scows shall be equipped with radio control dump mechanisms.

## 3.22 HAWSER LENGTH

The Contractor shall be required to document the length of cable or hawser released during the tow of each scow or barge to the disposal site. The distance between the scow and the towing vessel shall be noted for each disposal event and made a part of the daily report of operations. A digital compass shall be used to provide an azimuth to the scow.

## 3.23 OCEAN DISPOSAL VERIFICATION

### 3.23.1 Hopper Dredge, Barge, or Scow

(a) The Contractor shall prepare and operate under an approved ocean disposal verification plan. This plan shall include an automated system that will record the horizontal location and draft condition of the disposal vessel or scow from the time dredging ceases and the transit to the disposal area begins until dredging begins again. Vessel positioning as a minimum shall use either a microwave line-of-sight system or differential global positioning. Required digital data to be collected and recorded for each load is as follows:

(1) Sequential load number

(2) Date

(3) Time, disposal vessel position, and draft in one (1) minute intervals for the disposal cycle specified previously, positioning in North Carolina State Plane Coordinates, draft in feet.

(4) Begin and end dump event times and positions

(b) This data shall be maintained by the Contractor and made available to the Contracting Officer's Representative upon request, in ASCII digital format on a 3.5 inch, 1.44 MB diskette or other format agreed to by the Contracting Officer.

(c) To document that dredged material is being appropriately placed within the disposal area, the Contractor shall provide a track plot for each days **events**. The interval of events actually plotted or listed herein may be adjusted for clarity after coordination and agreement by the Contracting Officer's Representative. The track plot must indicate the start and stop dump times. These records shall be submitted in a complete, neat and orderly manner on a daily basis to the Contracting Officer's Representative.

(d) The Contractor shall also maintain a manually documented dump event log on the form provided or equivalent agreed upon by the Contracting Officer. This log shall contain the following and be submitted, on a daily basis to the Contractor's Officer's Representative.

(1) Sequential load number

(2) Scow or disposal number (or name)

(3) Date

(4) End dump event time and state plane coordinates

(e) The Contractor shall maintain an electronic spreadsheet data record of the ocean dumping project information. The spreadsheet shall be prepared in a form readily exportable to Microsoft Excel 5.0 and shall be similar to the sample form provided in Attachment 1. The spreadsheet shall contain the following:

(1) Vessel Name

(2) Sequential Load Number

(3) Date (month/date/year)

(4) Start Dump Time (24 hour clock)

(5) Start Dump Position (x position NC State Plane Coordinate)

(6) Start Dump Position (y position NC State Plane Coordinate)

(7) Observed depth at dump location

(8) Responsible party on watch

(9) Estimated quantity in load (cy)

**(10) Dredging range or location**

(f) This spreadsheet shall be updated and submitted weekly in digital (electronic file) format to the Contracting Officer. The dump positions reported in the spreadsheet shall come from the silent inspector (Automated Navigation Recording).

(g) The verification plan shall be in operation throughout the project. The Contractor shall provide an example of the ocean disposal verification submittals prior to the disposal of the first load. If for any reason the verification data devices stop functioning, they shall be repaired or replaced immediately upon return to the work site. No vessel shall leave for the disposal site without the ability to collect and record the ocean disposal verification data specified. Material placed without the specified verification data shall be considered misplaced materials under this contract.

(h) Horizontal location shall have an accuracy equal to or better than **+/-10 feet** (horizontal repeatability). Vertical data (draft) shall have an accuracy of **+/-1/2 foot**. Horizontal and vertical data shall be collected in sets and each data set shall be referenced to local date and time (to the nearest minute) and shall be referenced to the same geographic reference system used for the survey(s) shown in the contract drawings.

3.23.2 Pipeline Dredge

If a pipeline dredge is used to pump dredged material to the **specified disposal areas**, the Contractor shall maintain an electronic spreadsheet data record of dredging and disposal information. The spreadsheet shall be prepared in a form readily exportable to Microsoft Excel 5.0 and be similar to the sample form provided in Attachment 2. The spreadsheet shall contain the following:

1. Dredge Name
2. Date (Month/day/year)
3. Hour of record (in 1 hour intervals)
4. Dredging this hour (yes/no)
5. Pipeline discharge position (x position NC State Plane Coordinate)
6. Pipeline discharge position (y position NC State Plane Coordinate)
7. Estimated discharge (pump) time for prior hour (minutes)
8. Dredging range or location
9. Responsible party on watch

This spreadsheet shall be maintained and submitted weekly in digital (electronic file) format to the Contracting Officer.

### 3.24 SITE SPECIFIC INFORMATION

#### 3.24.1 Geology and Character of Materials

##### 3.24.1.1 Subsurface Data

Subsurface and laboratory data are presented in Volume II, Appendices A and B. Boring and probe locations are shown on the drawings.

##### 3.24.1.2 Drilling Logs

Drilling logs of borings applicable to the subsurface investigation of the project site are provided in Appendix A. Drilling logs of other borings in the vicinity of the project site not provided in Appendix A are available upon request, as indicated on SF 1442, block 9.

Drilling logs data are representative of subsurface conditions at their respective locations and for their respective vertical range of drilled depth, local variations in the subsurface materials are to be expected and, if encountered, will not be considered as being materially different within the purview of FAR 52.236-2, Differing Site Conditions of the contract.

In the drilling logs the soil and top of rock contact (Top of Rock) is determined by splitspoon refusal and geologic criteria. Splitspoon refusal is that point in which a splitspoon does not penetrate a foot of material with one hundred blows of the 140-pound hammer falling 30-inches, and geologically, the material is not Recent age alluvium, is in situ, and at some point in time had been or is indurated. In other borings top of rock may be tentatively defined (Assumed Top of Rock) by fishtail bit refusal or jet probe refusal. Fishtail bit refusal is the point that, while drilling, overburden material resistance to drilling action stresses the drilling equipment, drilling penetration rate decreases, and to continue drilling with the fishtail bit could cause damage to the bit, rods, or drill rig. Jet probe refusal is that point in which the advancement of an opened end string of drill rods being jetted down with water encounters a solid resistance and upon bouncing the end of the rods on the resistant material produces the sound and vibration interpreted by geotechnical technicians or professionals as steel striking indurated material and lacking physical characteristics associated with soils.

##### 3.24.1.3 Sieve Analyses

Sieve analyses of selected soil samples are provided in Appendix B. Visual classifications based on the sieve data are included on the gradation form.

##### 3.24.1.4 Excavated Materials

The majority of the material to be excavated is described in subparagraph Site Geology and Soils. The material varies in sand and shell content dependent upon location. Refer to the drilling logs and the laboratory sieve data. Although there was extensive sampling done some variations in materials may exist.

#### 3.24.2 General Geology

##### 3.24.2.1 Physiographic Province

The project site is in the Coastal Plain Physiographic Province (Coastal Plain) of the Eastern United States. The Coastal Plain is composed of sand,

gravel, clay, and/or silt or admixtures of these sediments, which range from unconsolidated to various stages of induration, and poorly to well cemented carbonate and other sedimentary rock. The Coastal Plain deposition is wedge-shaped with the thin edge in the west overlying the eastern Piedmont Physiographic Province and the thickened edge in the east covered by the Atlantic Ocean. This Coastal Plain deposition overlies crystalline basement rock. In the Cape Fear area the depth to crystalline basement rock is approximately 1,500 feet.

#### 3.24.2.2 Geomorphology

The historical geological development of the Cape Fear area includes cycles of erosion and deposition, transgressions and regressions of the antediluvian ocean, and the evolution of the Cape Fear River. During the geomorphological development of the area, sediments were deposited and then all or portions of the deposition may have been removed or scoured by transgressions and regressions of the ocean or the meandering developing Cape Fear River. Subsequently, these scoured areas or channels may have been filled in with younger material. Some of this material may have been indurated while other remained soil-like in character. As the Cape Fear River meandered across the area depositing and eroding sediments and rock, it developed and abandoned river channels through geologic time. The combined geologic processes produced irregular rock surfaces of the geologic formations underlying the ocean sediments in the project area. The primary area of deposition of the sediments carried by the Cape Fear River was and is in the vicinity of the mouth of the river. Recent alluvium overlies geologically older sediments and rock.

#### 3.24.2.3 Area Distribution of the Rock Surface

With respect to the existing Baldhead Shoal Channel, the rock surface is approximately at elevation -70 feet Mean Lower Low Water (or -70 MLLW) at existing station 0+00 to about existing station 125+00 where the rock surface begins to rise to about elevation -38 MLLW to about existing station 305+00. Seaward of existing station 305+00, the elevation of the rock surface varies. Southeast of the existing Baldhead Shoal Channel, the rock surface begins to dip toward the southeast. The rock surface dips consistently in such a fashion that a northeast-southwest trend is delineated. It is thought this depression or trough is the result of a buried channel incised by the Cape Fear River in the geologic past. The new alignment of Baldhead Shoal Channel is located on the northwestern side of the trough.

#### 3.24.3 Site Geology and Soils

##### 3.24.3.1 Rock

Rock types encountered in borings in the Baldhead Shoal Channel area consist of predominantly mudstone and limestone of Paleocene to Eocene age. The respective types of rocks may be silty, calcareous, dolomitic, or sandy. The limestone, in places, is fossiliferous. Rock encountered in borings in the project area varied from poorly to well cemented. The geomorphological development of the area generally produced lithologies having uncomformable contacts. When well cemented rock was encountered in borings, it was in or in the vicinity of the uncomformable contacts. Rock was encountered in borings at elevations as described in the drilling logs. Pinnacles of rock may exist in the area. Description of rock encountered in borings in Baldhead Shoal Channel area are on drilling logs in Appendix A.

### 3.24.3.2 Soils

The types of materials that are to be excavated from the channels are described on the drilling logs in Appendix A. These types of materials are comprised of predominantly alluvium and geologically older sediments. In the drilling logs the alluvium and older sediments are not differentiated by age or origin. The soils present consist of inorganic silts (ML & MH), inorganic clays (CL & CH), silty sand (SM), poorly graded sand (SP), poorly graded silty sand (SP-SM), clayey sand (SC), and organic silts and clays (OH). Wood, cemented sand, silt and clay, and well cemented rock with high compressive strength may also be encountered.

### 3.24.3.3 Geologic Formations

From oldest to youngest the geologic formations consist of the Yaupon Beach Formation (formerly called Olive Sand), Bald Head Shoals Formation (formerly called Turritellid Limestone), Castle Hayne Limestone (Unit A), Castle Hayne Limestone (Unit B), and the Waccamaw Formation. General descriptions of the geologic formations of the project area are from Harris, W. B. and Laws, R. A., 1994, "Paleocene Sediments on the Axis of the Cape Fear Arch, Long Bay, North Carolina," Southeastern Geology, V.34, No.4, p. 185-199.

#### 3.24.3.4 Yaupon Beach Formation (Paleocene)

This formation is "predominantly comprised of an olive green to gray, glauconitic, very fine to fine-grained slightly silty bioturbated quartz sand."

#### 3.24.3.5 Bald Head Shoals Formation (Paleocene)

The Bald Head Shoals Formation is "medium to dark gray, sandy molluscan-mold mudstone, wackestone, to packstone." Characteristic of its composition is turritellid gastropod molds.

#### 3.24.3.6 Castle Hayne Limestone Formation, Unit A (Middle Eocene)

Unit A usually is a "well-indurated, cross-bedded, bryozoan limestone."

#### 3.24.3.7 Castle Hayne Limestone Formation, Unit B (Upper/Middle Eocene)

Unit B is generally "fossiliferous with some gravel size brachiopods, sand dollars, and pelecypod fossils. Some lenses of medium grained limestone similar in appearance to that found in Unit A occurs but is poorly lithified or unlithified and is not cross-bedded."

#### 3.24.3.8 Waccamaw Formation

This unit consists of fossiliferous, phosphatic, calcareous quartz sand. This material is tentatively identified as Waccamaw Formation.

### 3.25 QUALITY CONTROL

The Contractor shall establish and maintain quality control for the berm work and all other operations in connection therewith to assure compliance with contract requirements. The Contractor shall inspect for compliance with contract requirements and record the inspection of all operations including but not limited to the following:

The fill material is placed within the tolerances specified.

Dredging is confined within the limits of the designated channel.

The dredge effluent does not flow landward of the fill section or other limits established by the Contracting Officer.

Damage to the existing berm and dune is held to the minimum possible.

Adequate control is provided to prevent unnecessary loss of material by seaward flow of pipeline effluent.

The pipeline is periodically inspected for leakage as specified.

All joints of pipe for discharge line are tight and sound.

Plan addressing the use and removal of construction stakes. The plan shall include the proposed material to be used for the construction stakes and a proposed accounting method for inventorying the stakes. A daily log of those stakes deployed and removed shall be maintained by the Contractor and submitted to the Contracting Officer.

A copy of these quality control records, as well as the records of corrective action taken will be furnished the Government as directed by the Contracting Officer.

-- End of Section --