

**US Army Corps
of Engineers®**
Memphis District

Project Title:

**MISSISSIPPI RIVER CHANNEL DREDGING WITH A
HYDRAULIC PIPELINE DUSTPAN DREDGE AND
ATTENDANT PLANT**

Location:

**Various Locations on the Mississippi River and
Tributaries**

**Construction Solicitation
and Specifications**

THIS IS AN UNRESTRICTED SOLICITATION

Date: AUG 2000

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TECHNICAL SPECIFICATIONS

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SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NO. DACW66-00-R-0005	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 08/16/2000	PAGE OF PAGES
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.			

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. W38XGR-0147-0955	6. PROJECT NO. DACW66-00-R-0005
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7. ISSUED BY U S ARMY ENGINEER DISTRICT, MEMPHIS CONTRACTING DIVISION (CEVM-CT) 167 NORTH MAIN STRET B202 MEMPHIS, TN 38103-1894	CODE W38XGR	8. ADDRESS OFFER TO ADDRESS SAME AS BLOCK 7. HAND DELIVERED BIDS RECEIVED IN ROOM 681, CLIFFORD DAVIS FEDERAL BUILDING, 167 NORTH MAIN STREET, MEMPHIS, TN
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9. FOR INFORMATION CALL:	A. NAME SEE BIDDING SCHEDULE	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)
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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):

The work required is for Mississippi River Channel Dredging with a Hydraulic Pipeline Dustpan Dredge and Attendant Plant.
Description of Work:

The work consists of furnishing, delivering, and operating one fully operated hydraulic pipeline dustpan dredge for the removal and satisfactory disposal of shoal material. The primary dredging region will be any point on the Mississippi River between Cairo, Illinois (Mile 953.8 AHP) and New Orleans, LA (Mile 106 AHP). Dredging may be required at secondary locations between Cubit's Gap (Mile 4.0 AHP) and Southwest Bar Channel (Mile 22.0 BHP); between St. Louis, Missouri (Mile 184.1 UMR) and Mile 0.0 UMR; and tributaries of the Mississippi River.

The value of the proposed work for Lot One is \$5,000,000.00 to \$10,000,000.00.

The value of the proposed work for Lot Two is more than \$10,000,000.00.

General Decision Nos. AR000045, IL000018, IL000019, KY000050, LA000051 and MS000059 are located behind Section 00010.

THIS IS AN UNRESTRICTED SOLICITATION.

11. The Contractor shall begin performance within _____*_____ calendar days and complete it within _____*_____ calendar days after receiving

award, notice to proceed. This performance period is mandatory, negotiable. (See *Sec. 00800, Para. 1.2 .)

12A. 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 0 copies to perform the work required are due at the place specified in Item 8 by C.O.B. (hour) local time 10/02/2000 (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.

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code) CAGE CODE: DUNS NO. CODE FACILITY CODE	15. TELEPHONE NO. (Include area code) 16. REMITTANCE ADDRESS (Include only if different than Item 14)
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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 requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS

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 (Type or print)	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	
24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM	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) ()
26. ADMINISTERED BY CODE	27. PAYMENT WILL BE MADE BY	

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

28. NEGOTIATED AGREEMENT (contractor is required to sign this document and return _____ copies to issuing office.) 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 incorporated by reference in or attached to this contract.

29. AWARD (Contractor is not required to sign this document.) 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.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31A. NAME OF CONTRACTING OFFICER (Type or print)		
30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY	31C. AWARD DATE

**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT ONE (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0001	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0002	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0003	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0004	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0005	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0006	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0007	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0008	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0009	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0010	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0011	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0012	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0013	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
TOTAL LOT ONE - ITEMS 0001 THROUGH 0013					\$ _____

SEE NOTES PAGE 00010 - 14

**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE A - FIRST BASE YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0014	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0015	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0016	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0017	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0018	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0019	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0020	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0021	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0022	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0023	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0024	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0025	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0026	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____

SUBTOTAL LOT TWO - ITEMS 0014 THROUGH 0026

\$ _____

SEE NOTES PAGE 00010 - 14

**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE B - SECOND BASE YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0027	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0028	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0029	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0030	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0031	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0032	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0033	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0034	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0035	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0036	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0037	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0038	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0039	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0027 THROUGH 0039					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE C - THIRD BASE YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0040	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0041	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0042	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0043	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0044	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0045	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0046	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0047	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0048	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0049	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0050	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0051	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0052	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0040 THROUGH 0052					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE D - FOURTH BASE YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0053	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0054	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0055	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0056	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0057	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0058	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0059	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0060	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0061	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0062	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0063	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0064	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0065	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0053 THROUGH 0065					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE E - FIFTH BASE YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0066	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0067	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0068	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0069	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0070	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0071	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0072	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0073	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0074	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0075	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0076	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0077	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0078	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0066 THROUGH 0078					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE F - FIRST OPTION YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0079	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0080	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0081	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0082	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0083	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0084	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0085	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0086	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0087	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0088	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0089	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0090	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0091	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0079 THROUGH 0091					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE G - SECOND OPTION YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0092	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0093	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0094	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0095	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0096	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0097	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0098	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0099	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0100	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0101	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0102	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0103	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0104	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0092 THROUGH 0104					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE H - THIRD OPTION YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0105	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0106	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0107	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0108	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0109	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0110	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0111	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0112	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0113	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0114	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0115	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0116	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0117	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0105 THROUGH 0117					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE I - FOURTH OPTION YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0118	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0119	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0120	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0121	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0122	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0123	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0124	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0125	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0126	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0127	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0128	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0129	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0130	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____
SUBTOTAL LOT TWO - ITEMS 0118 THROUGH 0130					\$ _____

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**SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS**

LOT TWO - SCHEDULE J - FIFTH OPTION YEAR (12 MONTHS)

Item No	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
0131	Mobilization & Demobilization	1	LS	XXX.XX	\$ _____
0132	Interim Demobilization - Mobilization	2	EA	\$ _____	\$ _____
0133	Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge & Attendant Plant	12	MO	\$ _____	\$ _____
0134	Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR	250,000	CY	\$ _____	\$ _____
0135	Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP	2,500,000	CY	\$ _____	\$ _____
0136	Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP	8,000,000	CY	\$ _____	\$ _____
0137	Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass 22.0 BHP	250,000	CY	\$ _____	\$ _____
0138	Moving Upstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0139	Moving Upstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0140	Moving Downstream Below Mile 953.8 AHP	1,000	Mile	\$ _____	\$ _____
0141	Moving Downstream Above Mile 0.0 UMR	150	Mile	\$ _____	\$ _____
0142	Standby Time Below Mile 953.8 AHP	300	HR	\$ _____	\$ _____
0143	Standby Time Above Mile 0.0 UMR	30	HR	\$ _____	\$ _____

SUBTOTAL LOT TWO - ITEMS 0131 THROUGH 0143 \$ _____

TOTAL LOT TWO - ITEMS 0014 THROUGH 0143 \$ _____

SEE NOTES PAGE 00010 - 14

NOTES:

1. Administrative Point of Contact: Wendell Norman (901) 544-0775
Wendell.N.Norman@mvm02.usace.army.mil
Technical Point of Contact: Tom Morgan (901) 544-3114
Thomas.P.Morgan@mvm02.usace.army.mil
2. **It is anticipated that two contracts will be awarded concurrently from this solicitation.**
3. Lot One consists of 12 months commencing upon the date of contract award. Lot Two consists of a basic requirement of five years commencing on or about twelve (12) months after contract award, plus five option periods not to exceed 12 months for each option period. The total duration of Lot Two with base years and all option years shall not exceed 11 years. During the initial 12 months of the contract for Lot Two, no work will be required. The First Base Year of Lot Two is defined as the period beginning with Notice to Proceed and ending twelve (12) months thereafter. It is anticipated that Notice to Proceed on Lot Two will be issued on or about one year after award. See the paragraph entitled "Duration of Contract" in Section 00800 for further information.
4. An offeror may submit an offer on Lot One or Lot Two separately, or both lots combined. As a basis for award, Lot One and Lot Two will be evaluated separately. Lot One will be awarded as a whole to one offeror. Lot Two will be awarded as a whole to one offeror. An offeror can receive an award for both Lot 1 and Lot 2. For Lot Two, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic five-year requirement. Evaluation of options will not obligate the Government to exercise the options.
5. The estimated quantity for "Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant" is discussed in the paragraph entitled "Work Season" of Section 00800.
6. All items titled "Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant" shall contain fixed costs only. All other line items are to contain operating costs only. See Section 01025, "Measurement and Payment".
7. Offerors shall furnish unit prices for all items listed on the schedule of bid items, which require unit prices. If the offeror fails to insert a unit price in the appropriate blank for required items, but does furnish an extended total or an estimated amount for such items, the Government will deem his unit price to be the quotient obtained by dividing the extended estimated amount for that line item by the quantity.
8. All quantities are estimated except where unit is given as "LS".
9. If an offer or modification to an offer based on unit prices is submitted and provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price, including lump sum units, in bid schedule must be stated, or,

if it is not stated, the offeror agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule.

10. Offerors are cautioned to read Contract Clause Entitled “Required Central Contractor Registration” (252.204-7004) located in Section 00700.

11. See paragraphs entitled “Fuel Price Adjustment” and “Wage Rate Adjustment” in Section 00800 for factors that affect contract pricing.

12. The offeror shall complete the following plant data sheets for each dredge and attendant plant that the offeror intends to use to perform the work under this contract.

End of Notes

**DEPARTMENT OF THE ARMY
MEMPHIS DISTRICT, CORPS OF ENGINEERS
167 NORTH MAIN STREET ROOM B-202
MEMPHIS, TENNESSEE 38103-1894**

DUSTPAN DREDGE AND ATTENDANT PLANT DATA SHEET

In compliance with the contract requirements to submit plant data and subject to all conditions thereof, the undersigned

_____ a corporation/joint venture/individual (indicate appropriate status) organized and existing under the laws of the City of _____ and the State of _____, hereby correctly describes the Contractor's plant to the Government, which will be furnished, delivered, and operated to perform work as described in the specifications.

Signed: _____
Certifying Officer of the Contractor's Firm
Title: _____

One dustpan hydraulic pipeline dredge and attendant plant with the following characteristics (in English units of measurement):

1. DREDGE INFORMATION:

- (a) Dredge name: _____
- (b) Dredge USCG official number: _____
Manufacturer: _____
- (c) Age and condition: _____
- (d) Maximum draft of dredge: _____
- (e) Hull length : _____ beam: _____
- (f) Minimum width of channel in which dredge can successfully operate and make a 180 degree turn around: _____
- (g) Loaded freeboard: _____
- (h) Minimum depth of freshwater in which the dredge can successfully operate: _____
- (i) Is dredge self propelled? _____ If so, number of screws and horsepower applied to each screw: _____
- (j) If dredge has external propulsion, indicate mode of propulsion, and associated horsepower and number screws: _____
- (k) Number of hauling wires, forward and aft, and maximum length each, available for dredging operations: _____
- (l) Hauling wires, number of parts and diameter: _____
- (m) Maximum allowable force applied to each hauling wire: _____
- (n) Maximum rate of advance of the dredge with no resistance applied to the hauling wires due to dredging operations: _____

- (o) Maximum channel dredging width possible on a single setup of the wires, and number of cuts required to complete dredging in the setup: _____
- (p) Length of dredge dustpan ladder: _____
- (q) Inside diameter of suction inlet: _____
- (r) Length and inside diameter of suction pipeline: _____
- (s) Width of dustpan head: _____
- (t) Must the dustpan head be mechanically adjusted for switching to/from shallow/deep dredging modes? _____
- (u) Diameter of jet pump impeller eye and discharge: _____
- (v) Outside diameter of jet pump impeller: _____
- (w) Brake horsepower and corresponding engine revolutions per minute(RPM) applied to jet pump impeller at rated drive of the prime mover, during dredging operations: _____
- (x) Number and inside diameter of dustpan jet orifices, jet water pressure, and jet water flow rate, applied during dredging operations: _____
- (y) Depth range to which dredge will dig:
Maximum: _____
Minimum: _____
- (z) Length and inside diameter of boat pipeline: _____
- (aa) Length and inside diameter of open-water discharge Pipeline: _____
- (ab) Inside diameter of main* dredge pump discharge: _____
- (ac) Suction lift (Elevation of main dredge pump relative to the water surface level): _____
- (ad) Diameter of main dredge pump impeller eye and discharge: _____
- (ae) Outside diameter of main dredge pump impeller: _____
- (af) Brake horsepower and corresponding engine RPM applied to main dredge pump impeller at rated drive of the prime mover, during dredging operations: _____
- (ag) Number and type of main dredge pump engine(s), their respective horsepower, and corresponding RPM: _____
- (ah) Completion date of each main dredge pump engine re-build: _____
- (ai) Inside diameter of ladder** dredge pump discharge: _____
- (aj) Diameter of ladder dredge pump impeller eye: _____

(ak) Outside diameter of ladder dredge pump impeller: _____

(al) Brake horsepower and corresponding engine RPM applied to ladder dredge pump impeller at rated drive of the prime mover, during dredging operations: _____

(am) Number and type of ladder dredge pump engine(s), their respective horsepower, and corresponding RPM: _____

(an) Completion date of each ladder dredge pump engine re-build: _____

(ao) Type(s) of production rate monitoring equipment on-board the dredge (measuring cy/hr of material dredged): _____

*"main" i.e, dredge pump located in the dredge hull
 ** for dredges without ladder dredge pumps, place "N/A" in spaces for related questions.

2. THE DREDGE MAY BE INSPECTED AT (List location of equipment):

3. ATTENDANT PLANT NO.1

(a) Name: _____
 USCG official number: _____

(b) Manufacturer: _____

(c) Age and condition: _____

(d) Length, beam, and draft: _____

(e) Boom length: _____

(f) Propulsion Mode (self/external): _____

(g) Propulsion Engines: _____ Port _____ Starboard _____

Make: _____

Model: _____

Brake horsepower: _____

(h) Owner, name and address: _____

(i) This plant may be inspected at the following location:

4. ATTENDANT PLANT NO. 2:

(a) Name: _____

USCG Official number: _____

(b) Manufacturer: _____

(c) Age and location: _____

(d) Length, beam, and draft: _____

(e) Boom length: _____

(f) Propulsion mode (self/external): _____

(g) Propulsion Engines: _____ Port: _____ Starboard _____

Make: _____

Model: _____

Brake horsepower: _____

(h) Owner, name and address: _____

(i) This plant may be inspected at the following location:

5. TENDER NO. 1:

(a) Name: _____

USG official number: _____

(b) Manufacturer: _____

(c) Age and condition: _____

(d) Length, beam, and draft: _____

(e) Propulsion Engines: _____ Port _____ Starboard _____

Make: _____

Model: _____

Brake Horsepower: _____

(f) Owner, name and address: _____

(g) The tender may be inspected at the following location:

6. TENDER NO. 2:

- (a) Name: _____
USG official number: _____
- (b) Manufacturer: _____
- (c) Age and condition: _____
- (d) Length, beam, and draft: _____
- (e) Propulsion Engines: _____ Port _____ Starboard _____
Make: _____
Model: _____
Brake Horsepower: _____
- (f) Owner, name and address: _____

- (g) The tender may be inspected at the following location:

7. WORK BOAT:

- (a) Firm Name: _____
USCG official number: _____
- (b) Manufacturer: _____
- (c) Age and condition: _____
- (d) Length, beam, and draft: _____
- (e) Propulsion Engines: Motor No. 1 Motor No. 2 Motor No.3
Make: _____
Model: _____
Horsepower: _____
- (f) Owner, name and address: _____

- (g) The work boat may be inspected at the following location:

8. REGION IN WHICH THE PLANT WAS LAST OPERATED: _____

9. CONTRACTOR'S DESIGNATED HOMEPORT FOR DREDGE & ATTENDENT PLANT:

Location: _____

10. DREDGE OWNER INFORMATION:

Firm Name _____
Point of contact: _____
Business address: _____
Street: _____
City: _____
Parish/County: _____
State: _____ Zip+4 _____
Telephone no. (_____) _____ Facsimile no. (____) _____

Additional signature blocks to be used for joint venture partner(s):

Firm Name: _____
Point of contact: _____
Title: _____
Business address: _____
Street: _____
City _____
Parish/County _____
State _____ Zip+4 _____
Telephone no. (_____) _____ Facsimile no. (____) _____

Firm name: _____
Point of contact: _____
Title _____
Business address: _____
Street _____
City _____
Parish county: _____
State _____ Zip+4 _____
Telephone no. (_____) _____ Facsimile no. _____

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. 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 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. 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:

(1) Economic Area 111, Little Rock-North Little Rock, AR.

Goals for minority participation for each trade	:	Goals for female participation for each trade
Non-SMSA Counties	16.4	6.9

AR Arkansas; AR Ashley; AR Bradley; AR Calhoun; AR Chicot; AR Clark,
 AR Cleburne, AR Cleveland; AR Conway; AR Dallas; AR Desha, AR Drew;
 AR Faulkner; AR Fulton; AR Garland; AR Grant, AR Hot Springs;
 AR Independence, AR Izard; AR Jackson; AR Johnson; AR Lincoln;
 AR Lonoke; AR Monroe; AR Montgomery; AR Ouachita; AR Perry;
 AR Pope, AR Prairie; AR Sharp; AR Stone; AR Union; AR Van Buren;
 AR White, AR Woodruff; AR Yell.

(2) Economic Area 056, Paducah, KY.

Goals for minority participation for each trade	:	Goals for female participation for each trade
Non-SMSA Counties	5.2	6.9

IL Hardin; IL Massac; IL Pope; KY Ballard; KY Caldwell; KY Calloway;
 KY Carlisle; KY Crittenden; KY Fulton; KY Graves; KY Hickman;
 KY Livingston; KY Lyon; KY McCracken; KY Marshall

(3) Economic Area 107, St. Louis, MO.

Goals for minority participation for each trade	:	Goals for female participation for each trade
Non-SMSA Counties	11.4	6.9

IL Alexander, IL Bond; IL Calhoun, IL Clay, IL Effingham, IL Fayette;
 IL Franklin; IL Greene, IL Jackson; IL Jasper; IL Jefferson, IL Jersey;
 IL Johnson; IL Macoupin; IL Marion; IL Montgomery; IL Perry,
 IL Pulaski; IL Randolph; IL Richland; IL Union; IL Washington;
 IL Wayne; IL Williamson; MO Bollinger; MO Butler; MO Cape Girardeau;
 MO Carter; MO Crawford; MO Dent; MO Gasconade; MO Iron;
 MO Lincoln; MO Madison; MO Maries; MO Mississippi;
 MO Montgomery; MO Perry; MO Phelps; MO Reynolds; MO Ripley;
 MO St. Francis; MO Ste. Genevieve; MO Scott; MO Stoddard;

MO Warren; MO Washington; MO Wayne

(4) Economic Area 055, Memphis, TN.

Goals for minority participation		:	Goals for female participation
for each trade		:	for each trade
SMSA Counties	32.3	:	
Non-SMSA Counties	26.5	:	6.9

SMSA Counties:

4920 Memphis, TN-AR-MS

AR Crittenden; MS DeSoto, TN Shelby, TN Tipton

Non-SMSA Counties:

AR Clay; AR Craighead; AR Cross, AR Greene; AR Lawrence; AR Lee, AR Mississippi; AR Phillips, AR Poinsett; AR Randolph; AR St. Francis; MS Alcorn; MS Benton; MS Bolivar; MS Clahoun; MS Carroll; MS Chickasaw; MS Clay; MS Coahoma; MS Grenada; MS Itawamba; MS Lafayette; MS Lee; MS Leflore; MS Marshall; MS Monroe; MS Montgomery; MS Panola; MS Pontotoc; MS Prentiss; MS Quitman; MS Sunflower; MS Tallahatchie; MS Tate; MS Tippah; MS Tishomingo; MS Union; MS Washington; MS Webster; MS Yalobusha; MO Dunklin; MO New Madrid; MO Pemiscot, TN Benton; TN Carroll, TN Chester; TN Crockett; TN Decator; TN Dyer; TN Fayette, TN Gibson; TN Hardeman; TN Hardin; TN Haywood; TN Henderson; TN Henry; TN Lake; TN Lauderdale; TN McNairy; TN Madison; TN Obion; TN Weakley.

(5) Economic Area 112, Jackson, MS.

Goals for minority participation		:	Goals for female participation
for each trade		:	for each trade
SMSA Counties	30.3	:	
Non-SMSA Counties	32.0	:	6.9

SMSA Counties:

3560 Jackson, MS, MS Hinds; MS Rankin

Non-SMSA Counties:

MS Attala; MS Choctaw; MS Claiborne; MS Clarke; MS Copiah; MS Convington, MS Franklin; MS Holmes; MS Humphreys; MS Issawuena; MS Jasper; MS Jefferson; MS Jefferson Davis; MS Jones; MS Kemper; MS Lauderdale; MS Lawrence; MS Leake; MS Lincoln; MS Lowndes; MS Madison; MS Neshoba; MS Newton; MS Noxubee; MS Okititebeha; MS Scott;

MS Sharkey; MS Simpson; MS Smith; MS Warren; MS Wayne; MS Winston; MS Yazoo

(6) Economic Area 113, New Orleans.

Goals for minority participation for each trade	:	Goals for female participation for each trade
SMSA Counties(0920) 19.2	:	
SMSA Counties(5560) 31.0	:	
Non-SMSA Counties 27.7	:	6.9

SMSA Counties:

0920 Biloxi-Gulfport, MS; MS Hancock; MS Harrison, MS Stone
 5560 New Orleans, LA; LA Jefferson; LA Orleans; LA St. Bernard;
 LA St. Tammany

Non-SMSA Counties:

LA Assumption; LA Lafourche; LA Plaquemines; LA St. Charles; LA St. James; LA St. John
 The Baptist; LA Tangipahoa; LA Terrebonne; LA Washington; MS Forrest; MS Lamar, MS
 Marion, MS Pearl River, MS Perry; MS Pike; MS Walnut

(7) Economic Area 114, Baton Rouge, LA

Goals for minority participation for each trade	:	Goals for female participation for each trade
SMSA Counties 26.1	:	
Non-SMSA Counties 30.4	:	6.9

SMSA Counties:

0760 Baton Rouge, LA; LA Ascension; LA East Baton Rouge; LA Livingston;
 LA West Baton Rouge

Non-SMSA Counties:

LA Concordia; LA E. Feliciana; LA Iberville; LA Pointe Coupee; LA St. Helena; LA West
 Feliciana; MS Adams, MS Amite; MS Wilkinson

(8) Economic Area 118, Monroe, LA

Goals for minority participation		:	Goals for female participation	
for each trade		:	for each trade	
SMSA Counties	22.8	:		
Non-SMSA Counties	27.9	:		6.9

SMSA Counties:

5200 Monroe, LA; LA Bossier; LA Caddo; LA Webster

Non-SMSA Counties:

LA Caldwell; LA Catahoula; LA East Carroll; LA Franklin LA Jackson; LA La Salle; LA Lincoln; LA Madison; LA Morehouse, LA Richland; LA Tensas; LA Union; LA West Carroll

- * 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

General Decision Number IL000018

General Decision Number IL000018 Superseded General Decision No. IL990018

State: Illinois

Construction Type:

DREDGING

MARINE

County(ies):

STATEWIDE

ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, NEW YORK, OHIO,
PENNSYLVANIA AND WISCONSIN

DREDGING AND MARINE CONSTRUCTION

Dredging and Marine Construction Projects: floating/land equipment engaged in clamshell, backhoe and dragline dredging, marine construction, bridges, salvage operations and cranes, loaders, dozers, or other equipment used for disposal of dredge spoils or marine construction materials on land at the slip or dock, at the project site, where the above material/spoils is being handled, and all equipment utilized on breakwall/breakwater structures on the Great Lakes, Islands therein, their connecting and tributary waters, including the Illinois Waterway to the Loc at Lockport, Illinois, the New York State Barge Canal System between Tonawanda, New York and Waterford, New York and Oswego, New York, the Duluth-Superior area to the Fond du Lac Bridge Crossing (Minnesota State Highway 23) on the St. Louis River and on the St. Lawrence River eastward to the International Boundary near St. Regis, New York.

Modification Number	Publication Date
0	02/11/2000
1	04/14/2000
2	04/28/2000
3	06/02/2000

COUNTY(ies):

STATEWIDE

* SUIL2001A 01/01/2000

Rates Fringes

MECHANICAL DREDGING (CLAMSHELL, DRAGLINE, AND BACKHOE) AND
MARINE CONSTRUCTION):

FLOATING EQUIPMENT:

Indiana:

Class I	30.95	9.80+b&c
Class II	29.45	9.80+b&c
Class III	26.20	9.80+b&c
Class IV	21.80	9.80+b&c

Illinois:

Class I	32.85	9.80+b&c
Class II	31.35	9.80+b&c
Class III	27.90	9.80+b&c
Class IV	23.20	9.80+b+c

Michigan:

Class I	25.00	11.97+b&c
Class II	23.50	11.97+b&c
Class III	20.95	11.97+b&c
Class IV	17.40	11.97+b&c

Minnesota:		
Class I	28.65	7.05+b&c
Class II	27.40	7.05+b&c
Class III	24.40	7.05+b&c
Class IV	20.27	7.05+b&c
New York:		
(Cattaraugus, Chautauga, Erie and Orleans Counties):		
Class I	26.96	13.56+b&c
Class II	25.46	13.56+b&c
Class III	22.66	13.56+b&c
Class IV	18.85	13.56+b&c
(Cayuga, Jefferson, Oswego, and St. Lawrence Counties):		
Class I	25.30	8.85+b&c
Class II	23.80	8.85+b&c
Class III	21.20	8.85+b&c
Class IV	17.65	8.85+b&c
(Niagara):		
Class I	24.90	11.90+b&c
Class II	23.40	11.90+b&c
Class III	20.80	11.90+b&c
Class IV	17.30	11.90+b&c
(Monroe and Wayne Counties and the City of Rochester):		
Class I	27.50	9.00+b&c
Class II	26.00	9.00+b&c
Class III	23.15	9.00+b&c
Class IV	19.25	9.00+b&c
Ohio:		
(Ashtabula, Cuyahoga, Erie, Lake, and Lorain Counties):		
Class I	28.73	7.10+b&c
Class II	28.44	7.10+b&c
Class III	25.32	7.10+b&c
Class IV	21.05	7.10+b&c
(Lucas, Henry, Ottawa, Wood and Sandusky Counties):		
Class I	27.02	7.10+b&c
Class II	26.73	7.10+b&c
Class III	23.79	7.10+b+c
Class IV	19.79	7.10+b&c
Pennsylvania:		
(Erie County):		
Class I	24.57	8.74+b&c
Class II	23.07	8.74+b&c
Class III	20.67	8.74+b&c
Class IV	17.77	8.74+b&c
Wisconsin:		
Includes all marine/floating type work on projects in the Superior/Duluth Harbor, Lake Superior.		
Class I	29.65	9.80+b&c
Class II	28.15	9.80+b&c
Class III	25.05	9.80+b&c
Class IV	20.85	9.80+b&c
HYDRAULIC DREDGING:		

TUG OPERATOR - Vessel Over 800 Horse- Power	22.10	1.10+a+b
LAUNCH OPERATOR - Vessel 800 Horse- Power Or Less	21.00	1.10+a+b
TUG ENGINEER	19.96	1.10+a+b
TUG WORKERS:		
Fireman, Lineman, Oiler, Deckhand, Tankerman. Scowman, (on/or with tugboats, launches, or other self-propelled boats)	19.00	1.10+a+b
DREDGE WORKERS:		
Lead Deckhand	24.75	1.10+a+b
Fireman, Oiler, Deckhand, & Scowman (with dipper, hydraulic or other floating equipment engaged in hydraulic and dipper dredging operations) Pipeline men, (both afloat & ashore including loading, unloading, maintaining, and handling pipelines for hydraulic dredges and sandboats) Rangeman, Tankerman, Sweepman and service Truck Driver	19.00	1.10+a+b

PAID HOLIDAYS (WHERE APPLICABLE):

A- NEW YEAR'S DAY, B- MEMORIAL DAY, C- INDEPENDENCE DAY, D-LABOR DAY, E- THANKSGIVING DAY, F- CHRISTMAS DAY, G- PRESIDENT'S DAY, H- VETERAN'S DAY.

FOOTNOTES:

- a. \$21.15 per day per employee.
- b. Eight paid holidays: A thru H
- c. Hazardous/Toxic Waste Material:
 - *Level A \$2.50 per hour
 - *Level B 2.00 per hour
 - *Level C 1.00 per hour
 - *Level D 0.50 per hour

Such wages shall be above the classifications of work listed under mechanical dredging and Marine construction of this general wage decision.

*Working with Hazardous Waste at this level as defined by the U. S. Enviromental Protection Agency.

CLASSIFICATION DESCRIPTIONS

Class I - Master Mechanic - assist and direct Class II, Class III, and Class IV, diver/wet tender, engineer (hydraulic dredge)

Class II - Crane/Backhoe Operator and Mechanic/Welder, Leverman (Hydraulic Dredging), ass't engineer (hydraulic dredge), leverman (hydraulic dredge) diver/tender.

Class III - Deck Equipment Operator (Machineryman) Maintenance of Crane (over 50 ton capacity) or Backhoe (115,000 pounds or more), Loader, tug/launch operator

Dozer and like equipment on Barge, breakwater wall, slip/dock, Scow,Deck Machinery, etc.

Class IV - Deck Equipment Operator, (Machinery operator, Fireman), (Four equipment units or more) and Crane Maintenance 50 ton capacity and under or Backhoe weighing 115,000 pounds or less,

assistant tug operator.

 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)(v)).

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:

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 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
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 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

General Decision Number IL000019

General Decision Number IL000019 Superseded General Decision No. IL990019

State: Illinois

Construction Type:

DREDGING

Dredging Construction Projects: Dredging the following rivers and their tributaries, the Kasakaski River from the mouth to Fayetteville, Illinois; Illinois River; Minnesota River; Mississippi River and the Ohio River.

Modification Number	Publication Date
0	02/11/2000
1	03/17/2000

* SUIL2002A 03/01/2000

	Rates	Fringes
AREA 1		
Within the geographical jurisdiction of the St. Louis District, Corps of Engineers:		
Levermen, Engineer, Mechanic and Boatman	20.63	9.00
Oiler	17.92	9.00
AREA 2		
Within the geographical jurisdiction of the Louisville District, Corps of Engineers:		
Levermen, Engineers, Mechanic and Boatman	20.52	9.00
Oiler	16.33	9.00
AREA 3		
Within the geographical jurisdiction of the Huntington District, Corps of Engineers:		
Levermen, Engineer, Mechanic, and Boatman	20.52	9.00
Oiler	16.33	9.00
AREA 4		
Within the geographical jurisdiction of the St. Paul, Rock Island, and Chicago Districts, Corps of Engineers:		
Levermen, Engineer, Mechanic, and Boatman	21.30	9.05
Oiler	18.07	9.05

 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)(v)).

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

General Decision Number KY000050

General Decision Number KY000050 Superseded General Decision No. KY990050

State: Kentucky

Construction Type:

DREDGING

County(ies):

STATEWIDE

DREDGING PROJECTS ALONG THE GULF COAST AREA INCLUDING THE
MISSISSIPPI RIVER AND ITS TRIBUTARIES TO THE OHIO RIVER

Modification Number Publication Date

0 02/11/2000

COUNTY(ies):

STATEWIDE

SUKY2001B 04/01/1994

	Rates	Fringes
DREDGES 16" AND OVER:		
Leverman	6.10	
Dredge Tender Operator	5.15	
First Assistant Engineer	6.06	
Second Assistant Engineer	5.50	
Third Assistant Engineer	5.15	
Deckhand	5.15	
Shoreman	5.15	
Fireman	5.15	
Oiler	5.15	
Truck Driver	5.15	
Welder	5.47	
DREDGES UNDER 16":		
Leverman	5.15	
Dredge tender Operator	5.15	
Deckhand	5.15	
Oiler	5.15	
Welder	5.15	
HYDRAULIC DREDGING:		
First Cook	5.15	
Second Cook	5.15	
Janitor - Cabin Person	5.15	
Handyman	5.15	
DERRICK OPERATOR	5.38	
DOZER OPERATOR	5.53	
MARSH BUGGY DRAGLINE:		
Operator	6.70	
Oiler	6.33	
SELF-PROPELLED HOPPER DREDGES:		
Drag Tender	9.70	3.45+a

FOOTNOTE:

- a. Fourteen paid vacation days and eight paid holidays:
New Year's Day, Good Friday, Memorial Day, Independence Day,
Labor Day, Veterans' Day, Thanksgiving Day & Christmas Day
provided the employee has one year of service

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

WAGE DETERMINATION APPEALS PROCESS

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- * 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:

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U.S. Department of Labor
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Washington, D. C. 20210

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U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

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END OF GENERAL DECISION

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END OF GENERAL DECISION

General Decision Number MS000059

General Decision Number MS000059 Superseded General Decision No. MS990059

State: Mississippi

Construction Type:

DREDGING

County(ies):

STATEWIDE

DREDGING PROJECTS ALONG THE MISSISSIPPI RIVER AND ITS

TRIBUTARIES

Modification Number Publication Date

0 02/11/2000

COUNTY(ies):

STATEWIDE

SUMS1071A 02/15/1990

	Rates	Fringes
DREDGES 16" AND OVER:		
Leverman	6.10	
Dredge Tender Operator	5.15	
First Assistant Engineer	6.06	
Second Assistant Engineer	5.50	
Third Assistant Engineer	5.15	
Deckhand	5.15	
Shoreman	5.15	
Fireman	5.15	
Oiler	5.15	
Truck Driver	5.15	
Welder	5.47	
DREDGES UNDER 16":		
Leverman	5.15	
Dredge tender Operator	5.15	
Deckhand	5.15	
Oiler	5.15	
Welder	5.15	
HYDRAULIC DREDGING:		
First Cook	5.15	
Second Cook	5.15	
Janitor - Cabin Person	5.15	
Handyman	5.15	
DERRICK OPERATOR	5.38	
DOZER OPERATOR	5.53	
MARSH BUGGY DRAGLINE:		
Operator	6.70	
Oiler	6.33	

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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

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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

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**SECTION 00100
INSTRUCTIONS TO BIDDERS**

CLAUSES INCORPORATED BY FULL TEXT

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.

(End of provision)

52.211-2 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained--

(a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

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)

52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (FEB 2000)

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

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

“In writing or written” means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation's closing

date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time”, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, or revision, of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, 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 proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

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

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

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals 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.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-- in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with-- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

- (3) The Government may waive informalities and minor irregularities in proposals received.
- (4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.
- (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) The Government may disclose the following information in postaward debriefings to other offerors:
- (i) The overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) The overall ranking of all offerors, when any ranking was developed by the agency

during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

52.216-1 TYPE OF CONTRACT (APR 1984)

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

(End of clause)

52.217-5 EVALUATION OF OPTIONS (JUL 1990)

(a) Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

**52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT--
CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)**

(a) Definitions. Construction material, designated country construction material, domestic construction material, foreign construction material, and NAFTA country construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program 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 FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of

the Buy American Act or Balance of Payments Program 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 or Balance of Payments Program, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(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, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country 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 FAR clause 52.225-11 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 FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country 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 twenty (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.

52.233-2 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

CHIEF, CONTRACTING DIVISION
 ATTN: CEMVM-CT – ROOM 681
 US ARMY, ENGINEER DISTRICT, MEMPHIS
 167 NORTH MAIN STREET B202
 MEMPHIS, TN 38103-1894

(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)

52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION (OCT 1997)

(a) Proposals 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 proposal must initial each erasure or change appearing on any proposal form.

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

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

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

(End of provision)

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far>
<http://farsite.hill.af.mil>
<http://www.dtic.mil/dfars>

52.0-4019 PREAWARD INFORMATION

Each bidder shall, upon request of the Contracting Officer, furnish a statement of whether he is now or ever has been engaged in any work similar to that covered by the specifications herein, the dollar value thereof, the year in which such work was performed, and the

manner of its execution and giving such other information as will tend to show the bidder's ability to prosecute the required work. The "such other information" referred to above shall include but is not limited to the following:

(a) The name and address of the office or firm under which such similar work was performed.

(b) A list of key personnel available for the instant project and their qualifications.

(c) A copy of bidder's latest financial statement, including the names of banks or other financial institutions with which the bidder conducts business. If the financial statement is more than 60 days old, a certificate should be attached stating that financial condition is substantially the same, or if not the same, the changes that have taken place. Such statement will be treated as confidential.

(d) A list of present commitments, including the dollar value thereof, and name of office under which work is being performed.

52.0-4047 SITE OF THE WORK

Bidders are advised that for the purpose of applicability of the Davis-Bacon Act and other contract labor standards provisions, "the site of the work" under the contract to be awarded pursuant to the solicitation may not be limited to the physical place(s) where the construction called for in the contract will remain when work on it has been completed. The "site of the work" may include other adjacent or nearby property used by the contractor or subcontractors during such construction. For example, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., will be considered part of the site of the work, provided they are dedicated exclusively or nearly so to performance on the contract and are located in proximity to the actual construction location that it would be reasonable to include them.

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)

252.236-7008 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.

52.214-5000 APPARENT CLERICAL MISTAKES (MAR 1995)—EFARS

(a) For the purpose of initial evaluations of bids, the following will be utilized in the 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.

(End of statement)

SUBMISSION OF QUESTIONS

Questions concerning this solicitation may be submitted in writing to the Contracting Officer (addressed as follows) on or before 6 SEP 2000. All questions received and answers thereto will be set forth in an amendment to this solicitation.

CHIEF, CONTRACTING DIVISION
ATTN: CEMVM-CT – ROOM 681
US ARMY, ENGINEER DISTRICT, MEMPHIS
167 NORTH MAIN STREET B202
MEMPHIS, TN 38103-1894

BASIS FOR AWARD

Award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standard for the non-cost factors in accordance with FAR 15.101-2.

Two fixed-price contracts will be awarded to the offeror(s) who is deemed responsible in accordance with the Federal Acquisition Regulation (FAR) Part 9, whose proposal conforms to the solicitation requirements, and is judged to represent the technically acceptable proposal with the lowest evaluated price.

While the government will strive for maximum objectivity, the source selection process, by its nature is subjective and therefore, professional judgement is implicit throughout the entire process. The Government reserves the right to award without discussions. Because an award may be made on the initial offer without discussions, offerors should submit their initial offers based upon terms and conditions which they consider to be the most favorable to the Government.

If no recommendation for award on initial offers is made, the procedures of FAR Subpart 15.3, Source Selection, will be followed in making a recommendation for award, which will be provided to the Contracting Officer for consideration as a basis for final determination.

PREPARATION OF PROPOSALS

It is the policy of the U.S. Army, Corps of Engineers not to provide any assistance to prospective offerors in the preparation of their proposals. However, this is not meant to preclude offeror's requests for information or clarification. Information will be provided if it is available and releasable, while clarification will be provided in all cases.

It is the offeror's responsibility to insure the completeness and accuracy of his proposal; and, excepting arithmetic error's in Section 00010, corrections will not be made by the Government.

Proposals shall be submitted in two separate volumes as listed below:

- a. Volume One (Three copies) - SF 1442 (Solicitation, Offer, and Award), Supplies or Services and Prices/Costs, Section 00600 (Representations and Certifications) and SF 24 (Bid Bond)
- b. Volume Two (Seven copies) - Technical Proposal

The proposal format and content have been partially standardized for this solicitation. The Dustpan Dredge and Attendant Plant Data Sheets (pages 00010-16 thru 00010-21) are to be completed by offerors and will in part, support your technical proposal. With regard to the information addressed in these forms, offerors may not vary from the prescribed format; however, other information required herein and additional information that may be supportive of your proposal may be submitted separately. All sheets submitted, including the solicitation proposal forms, shall not be permanently bound so that revisions may be incorporated as necessary into the final document.

Offerors shall submit Volumes I and II in separate loose-leaf binders. The proposals shall be typed, the pages shall be numbered, and the sections shall be tabbed. A cover sheet identifying the offeror and the solicitation number shall be provided. The second sheet shall be a table of contents.

EVALUATION

Proposals will be evaluated for technical capability, based upon the criteria set forth herein without reference to cost. All proposals determined to be technically acceptable will then be compared to determine the lowest evaluated price.

Technical Capability. Technical capability is the only non-cost factor that will be evaluated. For an offeror's technical proposal to be rated technically acceptable, it must demonstrate that the offeror can furnish a dustpan dredge and attendant plant that can meet all the specification requirements. It must also demonstrate that the offeror can deliver the dredge and attendant plant within the specified time periods. The offeror shall submit a comprehensive performance plan to demonstrate its ability to furnish a dustpan dredge and attendant plant complying with all the technical requirements in the solicitation within the specified period. The plan shall include, but is not limited to, the following:

- a. A description of the dredge and attendant plant proposed for work under this solicitation shall be provided. The offeror shall complete the Dustpan Dredge and Attendant Plant Data Sheets (Page 00010-16 thru 00010-21) for each dredge and

attendant plant that the offeror intends to use to perform the work under this solicitation. If the proposed dredge is to be constructed new or an existing dredge is to be altered or modified, the offeror shall provide the applicable information on the Dustpan Dredge and Attendant Plant Data Sheets for the proposed new or altered dredge.

b. If the proposed dredge is to be constructed new or an existing dredge is to be modified to meet the specified requirements, the offeror shall provide details of the proposed construction/modification to include, but not necessarily limited to, information on the existing dredge to be modified; the shipbuilder/manufacturer of the new or modified dredge; the proposed dredge configuration and design features; and a progress schedule to demonstrate the dredge can be constructed/modified in a timely manner.

c. The offeror shall submit technical data to demonstrate that the dredge can meet all the performance requirements of the contract, including the minimum output requirement. Technical data shall include, but are not limited to, dredge pumping calculations/curves based on the conditions specified for the minimum output requirements, and actual output data, if available, obtained from job records while dredging under similar conditions as specified for the minimum output requirement. The offeror shall describe how he will accomplish the required operational procedures to include, but not limited to, the method of moving the dredge and attendant plant out of the way of oncoming traffic, the means of controlling the floating pipeline while dredging, the proposed surveying methods and equipment including dredge positioning and hydrographic surveys, etc.

d. The Government may conduct an inspection of the proposed dredge and attendant plant to determine the offeror's capability to furnish a dredge and attendant plant that can successfully accomplish the work under this solicitation.

e. Listed below is a summary of the technical requirements contained in the specifications. This list is not necessarily an all-inclusive list of requirements. It is intended to assist the offeror in the preparation of his proposal. The offeror's proposal, as a minimum, shall address these requirements in detail, and all other specification requirements not listed. The proposal shall clearly demonstrate how the offeror intends to satisfy the specification requirements. Failure to clearly demonstrate compliance with any one of the specification requirements will result in a deficiency, and will render the offer technically unacceptable.

No.	Element	02482-
1	Fully operational dustpan dredge can be delivered on time	
2	Compliance with Coast Guard & safety regulations	1.b.
3	Adequately powered/geared, properly equipped for pump size & HP	2.a.
4	Minimum Dredge Output (4,800 cy per hour)	2.a.
5	Draft of floating plant (9-ft max)	2.a.
6	Capable of working efficiently in 10-ft depths & currents of 15 fps	2.a.
7	Dredging Depth Capability: 12' to 60' (Lot 1); 12' to 75' (Lot 2)	2.a.
8	Self propulsion to dredge efficiently and move in & out of traffic	2.a.
9	Dredge Sensory Equipment	3.a
10	Dredge Radar	3.c
11	Dredge Depth Sounding Device	3.d
12	Dredge DGPS electronic positioning system	3.d
13	Sufficient Attendant Plant & Condition	4
14	Tenders, two (twin screw)	4.b
15	Discharge Pipeline (800' to 1000')	4.c
16	Positive means of controlling floating pipeline	4.c
17	Landing Barge	4.d
18	Surveying Methods and Equipment Survey Boat (180 HP, twin screw, NLT 20') Depthsounder, DGPS Electronic Positioning Equipment	5 5.b(1) 5.b(2) 5.b(3)
19	Communication Equipment	9
20	Navigation Radar (survey boat)	10

END OF SECTION 00100

SECTION 00600
REPRESENTATIONS & CERTIFICATIONS
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**SECTION 00600
REPRESENTATIONS & CERTIFICATIONS**

CLAUSES INCORPORATED BY FULL TEXT

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)

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(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)

**52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999)
ALTERNATE I (OCT 1998) & ALTERNATE II (NOV 1999)**

(a)(1) The standard industrial classification (SIC) code for this acquisition is 1629.

(2) The small business size standard is \$13,500,000.00.

(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 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)(4)(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.

(5) [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. "Joint venture," for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

"Small business concern," as used in this provision, 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.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more

individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

"Women-owned small business concern," as used in this provision, means a small business concern--

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

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

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

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, 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)

52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(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 standard industrial classification 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 |
|--------------------------------------|--|
| <input type="checkbox"/> 50 or fewer | <input type="checkbox"/> \$1 million or less |
| <input type="checkbox"/> 51 - 100 | <input type="checkbox"/> \$1,000,001 - \$2 million |
| <input type="checkbox"/> 101 - 250 | <input type="checkbox"/> \$2,000,001 - \$3.5 million |
| <input type="checkbox"/> 251 - 500 | <input type="checkbox"/> \$3,500,001 - \$5 million |
| <input type="checkbox"/> 501 - 750 | <input type="checkbox"/> \$5,000,001 - \$10 million |
| <input type="checkbox"/> 751 - 1,000 | <input type="checkbox"/> \$10,000,001 - \$17 million |
| <input type="checkbox"/> Over 1,000 | <input type="checkbox"/> 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)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(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) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; 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.

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

(a) "Definitions."

As used in this provision --

(1) "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)

252.247-7022 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)

52.0-4031 CORPORATE CERTIFICATION

IF A BIDDER IS A CORPORATION OR IF CORPORATION IS PARTICIPATING IN A JOINT VENTURE, PLEASE COMPLETE THE FOLLOWING CERTIFICATION:

I, _____, certify that I am secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor; was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

(Secretary)

IF A CORPORATION IS PARTICIPATING AS A JOINT VENTURE, ITS SECRETARY MUST SUBMIT A CERTIFICATE STATING THE CORPORATION IS AUTHORIZED TO PARTICIPATE.

END OF SECTION 00600

**SECTION 00700
CONTRACT CLAUSES
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**SECTION 00700
CONTRACT CLAUSES**

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 DEFINITIONS. (OCT 1995)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(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 for nongovernmental 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 such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(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;

(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 Federal Government as part of an end item or of another component.

(e) 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 (e)(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 (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "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.

(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.

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 PRINTING/COPYING 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 principles, 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.

(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.

52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

(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) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall

have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating 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 contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such

appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, 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 or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause 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.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, 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.

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

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, 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 "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; 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 "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) 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

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

52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, 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 applies.

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

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data-- Modifications.

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs

through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

(End of clause)

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 132 months for Lot Two.

(End of clause)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women 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, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(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.

(c) Definitions. As used in this contract (1) Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) 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.

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals and small disadvantaged business concern mean a small business concern that represents, as part of its offer that--

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) 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

(iv) 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).

(4) Small business concern owned and controlled by women means a small business concern--

(i) Which 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

(ii) 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 HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, 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, 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, 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, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. 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;

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

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

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

(v) 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) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) 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), 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, HUBZone, 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) HUBZone small business concerns;
- (iii) Small disadvantaged business concerns; and
- (iv) 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, HUBZone small business, small disadvantaged 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 Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to 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 the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 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, 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, 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, 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 HUBZone small business concerns were solicited and, if not, why not;

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

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

(E) 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; and

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

(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, 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, 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, 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, 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, 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 subcontracting plan on a plant or division-wide basis which 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)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(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 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 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 Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

(End of clause)

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)

52.222-3 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 (JUL 1995)**

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. 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 any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized

representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

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

52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(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 (FEB 1999)

(a) 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 subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(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.

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 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

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

All employment openings includes 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.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

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

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

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

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing 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.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, 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 system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system 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, Guam, and the Virgin Islands.

(e) 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 disabled veterans and veterans of the Vietnam era, 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. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and 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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) 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.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more 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)

52.222-36 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 DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(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 disabled veterans and the number of veterans of the Vietnam era 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 that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted 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 during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous 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 count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era 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 the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(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)

52.223-6 DRUG-FREE WORKPLACE (JAN 1997)

(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 at which 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 1996)

(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) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); 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).

**52.225-11 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--
CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)**

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

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or 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.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

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.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

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) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: none

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) 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 restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program 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 or Balance of Payments Program. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) 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 or Balance of Payments Program 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)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(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\			

Item 1:			
Foreign construction material....
Domestic construction material...
Item 2:			
Foreign construction material....
Domestic construction material...

\1\ 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 (FEB 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, and Sudan.

(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)

52.225-15 SANCTIONED EUROPEAN UNION COUNTRY END PRODUCTS (FEB 2000)

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

Sanctioned European Union country end product means an article that--

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a sanctioned EU member state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Sanctioned European Union member state means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not deliver any sanctioned European Union country end products under this contract.

(End of clause)

52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (FEB 2000)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which 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 shall 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, which 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.

(c) The Contractor agrees to 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 shall 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-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not 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 equitable adjustment to the prime contract shall be 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.

(d) T 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.)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101 to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

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)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, 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," as used in this clause, 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," as used in this clause, 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," as used in this clause, 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.

- (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)

52.229-5 TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

- (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) Payments to subcontractors and suppliers have been made from previous payments received under the contract, 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.

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.

52.232-23 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 (JUN 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered 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 section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (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 shall be 14 days after receipt of the payment request by the designated billing office. 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 shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received 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, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(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 shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. 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 shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over

quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(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 subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to 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., prompt payment discount 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 be notified in the event of a defective invoice.

(viii) For payments described in subdivision (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) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (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 when Federal Government offices are closed and Government business is not expected to be conducted,

payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed 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 interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based 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 following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays 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. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty. (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors 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) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(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 include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to 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) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(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 subparagraph (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 subparagraph (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 subdivision (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 subparagraph (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 subdivision (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 subparagraph (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 subdivision (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 subdivision (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. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), 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 United States is a party. The United States 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 United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—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 the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(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. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and 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.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) 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) of this clause shall apply.

(g) 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.

(h) 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 register in the CCR database 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.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) 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 contained in the CCR database.

(End of Clause)

52.233-1 DISPUTES (DEC 1998)

(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. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. 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 as required by

subparagraph (d)(2) of this clause. 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.

**52.236-3 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)

(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.

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.

(End of clause)

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.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

(a) Definitions.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
- (4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) Government-furnished property. (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be

delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to

Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government--

- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when--

- (1) The Contractor submits a timely written request for an equitable adjustment; and
- (2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except--

- (1) For reasonable wear and tear;
- (2) To the extent property is consumed in performing this contract; or
- (3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

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.

52.248-3 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)

52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

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.

52.252-2 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.hill.af.mil>
<http://www.dtic.mil/dfars>

52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

N/A

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any DoD FAR Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

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)

252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(MAR 2000)

(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.ccr2000.com>.

(End of clause)

252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

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.

252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

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)

252.223-7001 HAZARD WARNING LABELS (DEC 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

- (1) Federal Insecticide, Fungicide and Rodenticide Act;
- (2) Federal Food, Drug and Cosmetics Act;
- (3) Consumer Product Safety Act;
- (4) Federal Hazardous Substances Act; or
- (5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labeled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert "None.")	ACT
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(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)

252.231-7000 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.

252.243-7001 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.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(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.

(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)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if-

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) 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.

(d) 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.
- (e) 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.

(f) 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		_____

(g) 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.

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontractors under this contract that--

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

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)

52.249-5000 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:

(1) 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.

(2) 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 of Clause)

END OF SECTION 00700

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SECTION 00800**SPECIAL CONTRACT REQUIREMENTS****1. SCOPE OF WORK.**

a. The work to be performed under the contract consists of furnishing all plant, materials, equipment, supplies, labor, per diem, and transportation, including fuel, power, water (except any materials, equipment, transportation, utility or service, if any specified herein to be furnished by the Government), and performing all work in strict accordance with the specifications and schedules. All work, materials, and services not expressly called for in these specifications which may be necessary for complete and proper operations to carry out the contract shall be performed, furnished, and installed by the Contractor at no increase in cost to the Government.

b. The Contractor's dredge and attendant plant shall be used to perform maintenance dredging operations within navigable channels of the New Orleans, Vicksburg, Memphis, and St. Louis Districts of the U.S. Army Corps of Engineers as described by the paragraphs entitled, Primary Dredging Region and Secondary Dredging Region, of this Section.

c. The work shall consist of removing and satisfactorily disposing of dredged material from the navigation channels and as directed by the Contracting Officer. The materials to be dredged may consist of riprap, boulders, gravel, sand, silt, mud, or clay. Debris and obstructions may also be encountered in the course of dredging operations and could include trash, roots, logs, stumps, rope, chain, various sized metal objects, cable and other miscellaneous items. While all types of materials could be encountered, the material will primarily be sand with some gravel.

d. The Contractor shall be responsible for detecting and reporting to the Government's Quality Assurance Representative (QAR) all materials or obstructions that might cause damage, or have the potential to cause damage to the dredge and attendant plant. The Government's QAR will evaluate the evidence of the obstruction(s) and based on this data may notify the Contracting Officer for additional instructions concerning the obstruction. The Government will not be responsible for damage to the Contractor's dredge or attendant plant due to its contact with materials or obstruction(s) that could cause such damage, or have the potential to cause such damage.

e. The Contractor shall mobilize the dredge and attendant plant to Baton Rouge, Louisiana (Mile 234 AHP) or to the first assignment as directed by the Contracting Officer. The Government reserves the right to make subsequent consecutive dredging assignments in the dredging regions described herein. If no follow on assignments are required, the Contractor will demobilize (interim demobilization) the dredge and attendant plant. Upon receipt of a subsequent assignment from the Contracting Officer, the Contractor shall execute an interim mobilization of the dredge and attendant plant to the assigned location. Upon expiration of this contract, the Government will release the Contractor's dredge and attendant at Baton Rouge, Louisiana (Mile 234 AHP) or at the last dredging assignment as directed by the Contracting Officer. (See Section 01025, paragraph 1.1.2 (1), Mobilization and Demobilization).

f. The Contractor's Homeport for the dredge and attendant plant, shall be as indicated by the Contractor in Paragraph 9 of the Dredge and Attendant Plant Data Sheet located at the end of Section 00010.

g. The dredging operations contemplated are not all in or near cities. Camps or floating plant may be necessary for the housing or boarding of the labor employed by the Contractor.

h. The Contractor will be directed to perform dredging assignments by issuance of written orders from the Contracting Officer.

2. INSPECTION, DELIVERY, PROSECUTION, AND COMPLETION.

a. After award of this contract but prior to delivery, the Contracting Officer will perform an inspection of the dredge and attendant plant at the location designated by the Contractor on the Plant and Equipment Data Sheet. During the inspection, the Contractor shall operate any piece of plant or equipment as directed. All plant and equipment must be in an operable condition and approved for delivery by the Contracting Officer prior to departure from the Contractor's facilities or other designated locations.

b. A pre-work conference will be held not less than 5 calendar days prior to commencement of work. The conference will be held in the conference room of the Administration Building, Ensley Engineer Yard of the Memphis District, U.S. Army Corps of Engineers. The Contracting Officer will notify the Contractor of the meeting date and time, within three calendar days thereof.

c. The Contractor shall deliver the dredge and attendant plant ready for operation to Baton Rouge, Louisiana (Mile 234 AHP) or the first dredging assignment as directed by the Contracting Officer within 20 calendar days after the date of receipt of notice to proceed. The plant and equipment will be inspected after delivery, and the Contractor notified of acceptance or rejection within 24 hours. During the inspection, the Contractor shall operate any piece of plant or equipment as directed.

d. The Contractor shall prosecute the work assigned to meet the schedule of dredging operations as determined by the Contracting Officer. The work shall be performed on a 7 day/week, 24 hours/day schedule.

e. The order of work to be performed under this contract cannot be determined except as the work progresses. Succeeding dredging location assignments may be upriver or downriver and may not be at consecutive locations. Upon completion of any given location the Contractor shall immediately proceed to and initiate dredging at the next assigned location. Also, repetitive assignments may be required at the same locations. Assignment of dredging locations will be dependent upon river stages and relative shoaling rates and channel conditions. The dredging locations will be assigned by the Contracting Officer via letter, facsimile, radio, or telephone. Assignment of the succeeding dredging locations will be made as early as possible, but assignments may be changed at any time without prior notice. The Contractor may be required to stop work prior

to completing an assignment, and may be directed to a higher priority assignment. The Contracting Officer reserves the right to order operations to cease whenever river conditions make dredging operations impracticable or uneconomical. The Contractor will then be directed to move to another dredging assignment, to standby, or to perform an interim demobilization.

f. Within 24 hours prior to the completion of dredging operations at an assigned dredging location, the Contractor shall notify the Contracting Officer of its best estimated completion time. This should be accomplished during normal District office business hours and not later than noon on Friday. Upon completion of all known dredging assignments, the Contractor may be required to perform an interim demobilization.

g. For each interim mobilization, the Contractor shall deliver the dredge and attendant plant, ready for operation, to a dredging assignment within 5 calendar days after the Contractor is notified to remobilize. The Contracting Officer reserves the right to re-inspect the dredge and attendant plant after delivery to the assigned dredging location.

h. Upon completion of the contract, the dredge and attendant plant will be released to the Contractor at Baton Rouge, Louisiana (Mile 234 AHP) or the last dredging assignment. (See Section 01025, paragraph 1.1.2 (1), Mobilization and Demobilization).

3. DURATION OF CONTRACT.

a. Lot One.

The contract duration shall be 12 months commencing upon the date of contract award.

b. Lot Two.

The contract duration will consist of a basic requirement of six years commencing upon the date of contract award, plus five option periods not to exceed 12 months for each period. The total duration of this contract including the base and all options shall not exceed 11 years. During the initial 12 months of the contract, no work will be required. Required dredging assignments will commence upon issuance of notice to proceed following the expiration of the first 12 months. During the initial 12 months of the contract, the successful Contractor may construct, modify, improve, alter, or otherwise prepare a dredge for work under this contract, however no separate payment will be made for this preparation. Upon mutual agreement between the Contractor and the Government, notice to proceed with dredging assignments may be issued within the first 12 months of the contract. Any work performed during the initial 12 months will be paid for at the applicable contract prices of Lot Two-Schedule A-First Base Year (12 Months) of Section 00010.

4. WORK SEASON.

a. The required dredging work season is 1 May through 31 December. The Contracting Officer may issue and the contractor shall perform dredging assignments at any time during this period as the need for dredging arises.

b. The Contractor will not be required to perform any work between 1 January through 30 April. However, upon mutual agreement of the Contractor and the Government, contract work may be performed during this non-work period. Contract work performed during this non-work period will be paid for at the applicable prices contained in the schedule for the base or option year in which the work is performed.

5. WORK FOR OTHERS.

a. At the Contractor's option, the Contractor may perform work for others using the dredge and attendant plant utilized in this contract during the non-work period of 1 January through 30 April. The Contractor is free to use the dredge and attendant plant as he sees fit, and the Contracting Officer will place no restrictions on the use of his dredge and attendant plant as long as the delivery requirements as specified in the paragraph entitled Inspection, Delivery, Prosecution, and Completion of this section are met.

b. During the work season of 1 May through 31 December, the contractor may utilize the dredge and attendant plant in work for others upon prior approval of the Contracting Officer. The dredge shall remain on 72-hour recall by the Contracting Officer during this release period. Regardless of the pay status of the dredge and attendant plant at the time that it is released, no payment will be made until it is returned and made available to perform work under this contract. Payment for demobilization at the time of release, mobilization at the time of recall, and all associated costs for moving from and returning to a contract location will not be made.

6. CONTINUING CONTRACTS (EFARS 52.232-5001—MAR 95).

a. This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of 22 September 1922 (33 US 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 Paragraph notwithstanding any contrary provision of the "Payments to Contractor" Paragraph or any other Paragraph 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.

7. PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DFARS 252.236-7004 DEC 1991).

a. The Government will pay all costs for the mobilization and demobilization of the Contractor's dredge and attendant plant at the contract lump sum price for this item:

(1) Sixty percent (60%) of the lump sum price will be paid upon completion of mobilization at the work site;

(2) The remaining forty percent (40%) will be paid 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; and

(ii) Actual demobilization costs at the 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 paragraph is not subject to appeal.

8. 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. WEATHER CONDITIONS. Data on weather conditions may be obtained from the National Weather Service.

b. CHANNEL TRAFFIC. Mississippi River traffic, in general, consists of ships, tow boats and barges, passenger vessels, and small boats.

c. CHANNEL CONDITIONS. Data on current channel conditions may be obtained from the U.S. Coast Guard.

d. STAGE HYDROGRAPHS. River stage hydrographs may be obtained from the Map Files Section of the New Orleans, Vicksburg, Memphis, and St. Louis Districts of the U.S. Army Corps of Engineers.

e. ADDITIONAL DATA. Historical Dustpan Dredging reports will be made available at the U.S. Army Engineer District, Memphis, TN.

9. MISPLACED MATERIAL.

If the Contractor deposits any dredged material, other than in Government designated disposal areas that may be dangerous to or obstruct navigation, the Contractor shall remove the same immediately at no additional costs to the Government.

10. SIGNAL LIGHTS.

The Contractor shall display signal lights and conduct its operations in accordance with US Coast Guard Regulations governing lights and day signals to be displayed, as set forth in Commandant, US Coast Guard Instruction M1 6672.2, Navigation Rules, International- Inland (COMDTINST M16672); or 33 CFR 81, Appendix A (International); and 33 CFR 84 through 90 (Inland) as applicable.

11. PLANT (Dredge and Attendant Plant).

a. General. Plant as used in this section refers to Dredge and Attendant Plant. The Contractor agrees to place plant on the job meeting the requirements herein specified. The plant shall be in satisfactory operating condition and capable of safely and efficiently performing the work specified. The plant shall be subject to inspection of the Contracting Officer at all times. Award of this contract shall not be construed as an agreement on the part of the Government that plant listed by the Contractor in his bid is adequate for the performance of the work. The measure of the "capacity of the plant" shall be based on actual performance of the work to which these specifications apply.

b. Unserviceable Plant. If, at any time during the life of the contract, the Contracting Officer determines that any item of plant, or part thereof, is inadequate for the service required, is not being operated at full capacity, has become unserviceable or unsafe, is incapable of efficient work, or is not being efficiently operated because of reduced or incompetent crew; he will notify the Contractor in writing. The Contracting Officer will direct that the item of plant, or part thereof, be removed from the work until the defects are corrected. However, the Contractor may substitute plant of similar capacity and power for any item of plant, or part thereof ordered removed from the work upon approval from the Contracting Officer. After the receipt of the Contracting Officer's notice, the Contractor shall expeditiously correct such defects, replace incompetent crew, or increase the size of the crew to the satisfaction of the Contracting Officer.

c. Operation and Repair. The Contractor shall furnish, at his expense, all necessary labor, fuel, equipment for transportation of fuel, appliances, appurtenances, equipment, materials, subsistence, and supplies, and bear all incidental expenses to the efficient operation of his plant and equipment. The Contractor shall also bear all direct overhead and collateral expenses incident to the operation, upkeep, and repair of all items of plant. The Contractor shall maintain the plant, in good state of repair; arrange for a supply of renewal parts to be on hand when needed; and provide and maintain

the crews for each item of plant employed in connection with the work. All floating pipelines shall be supported by the usual catamarans and bracing, or by small barges or pontoons. All pipelines must be kept in good condition at all times, and any pipeline leaks, or broken pipeline and/or connections must be promptly and properly repaired.

12. INSPECTION SERVICES TO BE FURNISHED TO THE GOVERNMENT.

a. The Contractor shall furnish upon request of the Contracting Officer or QAR assigned to the work:

(1) The use of such boats, boatmen, laborers, and materials forming a part of the ordinary and usual equipment and crew of the dredge and attendant plant, as may be reasonably necessary for inspection.

(2) Suitable transportation to and from the various pieces of plant, from all points on shore in the vicinity of the dredge, and to and from the discharge area.

b. Should the Contractor refuse, neglect, or delay compliance with these requirements, these facilities may be furnished and maintained by the Contracting Officer and the cost thereof will be deducted from any amounts due, or to become due, the Contractor.

13. OFFICE ACCOMMODATIONS AND MEALS.

The Contractor shall furnish the following during the work period from 1 May through 31 December and during the non-work period when dredging is performed under this contract.

a. OFFICE. The Contractor shall furnish an office equipped with the following items, which must be supplied in a fully functional condition. No smoking shall be allowed in the office while occupied by Government personnel. "NO SMOKING" signs shall be posted.

(1) A desk with locking drawers and two sets of matching keys;

(2) A swivel desk chair with a contoured seat, two arms, and adjustable height and back rest, all of which shall have fully cushioned and upholstered surfaces;

(3) A two-or-more drawer legal-sized file cabinet;

(4) A 3-by 5-ft drafting table, with a drafting table fluorescent light that is mechanically adjustable. This equipment shall include appropriate drafting instruments, as requested by the QAR;

(5) Legal/letter-sized capable copy machine - The Contractor may allow the use of its own in lieu of providing a separate one for the QAR;

(6) Facsimile machine - The Contractor may allow the use of its own in lieu of providing a separate one for the QAR;

(7) A fully setup and operational IBM-compatible desktop computer (PC) system with minimum specifications as follows: one Intel Pentium III Processor at 600 MHz; 64MB 100MHz ECC SDRAM; 7.5GB Ultra ATA hard drive; 32MB NVIDIA TNT2 M64 AGP Graphics; 48X Max CD-ROM Drive; SoundBlaster 64V Integrated Sound or Sound Card; PC Speakers; V.90 56K Capable PCI Data/FAX Modem; one 3-1/2 in. internal floppy disk drive; one 19" (17.9" vis, .24 - 25AG) FD Trinitron monitor; one two-button scroll mouse and pad; one black and white laser printer capable of printing on 8-1/2 X 11 in., and 8-1/2 X 14 in. paper, 4 pages/min. speed, 300X300 dpi printer resolution (HP 5L or equal); one power surge protector/command switch unit that protects all specified system equipment; and all necessary accompanying power chords, wires, etc., to complete the system operationally. The PC system shall be mounted on a suitable monolithic modular piece of furniture designed for workstations, which shall be set up to properly contain and support all required system equipment. The PC shall be pre-loaded with Microsoft Windows 98 SE or NT (Service Pack 5) operating system, Microsoft Office 2000 Small Business Edition, and a Government-approved dredge quantity computation program compatible with the dredging survey data provided by the Contractor to the Government all of which are to be setup to print to the above-specified printer. The user's manuals for all specified software shall be provided as part of the PC workstation. The workstation shall be for the exclusive use of the Government QAR aboard the dredge. The Contractor shall provide system maintenance within 24 hrs after request to remedy detected problems to the existing system or replace existing dysfunctional unit or any part thereof with equal replacement unit and return PC workstation to full operation within 48 hrs after service call. All components of the workstation specified herein shall remain the property of the Contractor upon contract completion.

b. Meals Supplied to Government Personnel. If the Contractor maintains facilities on the dredge or attendant plant for the subsistence of his own employees, he shall furnish meals to QAR's assigned to the dredge, and to all Government agents who may visit the dredge on official business. All costs for meals shall be included in the contract price and no separate payment will be made.

14. LAYOUT OF WORK.

The contractor shall furnish, operate and maintain a complete Differential Global Positioning System (DGPS) to provide dredge positioning and alignment in the various dredging assignments of this contract. The system shall utilize DGPS equipment in conjunction with the U.S. Coast Guard Radio Beacon DGPS Network, to provide real time positioning using UTM coordinates. Reference the paragraph entitled Survey Requirements of Section 02482.

15. SAFETY RELATED SPECIAL REQUIREMENTS.

ALL WORK UNDER THIS CONTRACT SHALL COMPLY WITH THE LATEST VERSION OF U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385-1-1 AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) STANDARDS, IN EFFECT ON THE DATE OF THE SOLICITATION. NO SEPARATE PAYMENT WILL BE MADE FOR COMPLIANCE WITH EM 385-1-1, NOR FOR COMPLIANCE WITH ANY OF THE OTHER SAFETY-RELATED SPECIAL REQUIREMENTS.

a. Accident Investigations and Reporting. Refer to EM 385-1-1, Section 1. Accidents shall be investigated and reports completed by the immediate supervisor of the employee(s) involved and reported to the Contracting Officer or his representative immediately after the accident occurs. A report of all mishaps occurring on the project shall be submitted to the Contracting Officer on ENG Form 3394 within 2 working days following the incident. All data reported must be complete, timely and accurate. A follow-up report shall be submitted when the estimated lost time days differ from actual lost time days. When a job related injury occurs which requires medical treatment, a supervisor of the injured employee shall accompany the injured employee to the treatment facility and explain the employees regular duties and the availability of "Light Duty" so the injured employee can return to work as soon as possible.

b. Accident Prevention Program. Refer to the Contract Clause entitled "Accident Prevention (Alt.I)." Within 21 calendar days after receipt of Notice of Award of the contract, four copies of the Accident Prevention Program shall be submitted to the Contracting Officer for review and approval. The accident prevention program is to conform to Appendix A (Minimum Basic Outline for Accident Prevention Plan) of the U.S. Army, Corps of Engineers, Safety And Health Requirements Manual, EM 385-1-1. The program shall be prepared in the following format:

- (1) An executed LMV Form 358R, Accident Prevention Program - Administrative Plan (available upon request).
- (2) An executed LMV Form 359R, Activity Hazard Analysis (available upon request).
- (3) A copy of company policy statement regarding accident prevention.
- (4) When marine plant and equipment are in use under a contract, the method of fuel oil transfer shall be submitted on LMV Form 414R, Fuel Oil Transfer (available upon request). (Refer to 33 CFR 156).

The Contractor shall not commence physical work at the site until the program has been approved by the Contracting Officer, or his authorized representative. At the Contracting Officer's discretion, the Contractor may submit his Activity Hazard Analysis for only the first phase of construction provided that it is accompanied by an outline of the remaining phases of construction. All remaining phases shall be submitted and accepted prior to the beginning of work in each phase. Also, refer to Section 1 of EM 385-1-1.

c. Daily Inspections. The Contractor shall perform daily safety inspections and record them on the forms approved by the Contracting Officer. Reports of daily inspections shall be maintained at the jobsite. The reports shall be records of the daily inspections and resulting actions. Each report will include, as a minimum, the following:

- (1) Phase(s) of construction underway during the inspection.
- (2) Locations or areas inspections were made.

(3) Results of inspection, including nature of deficiencies observed and corrective actions taken, or to be taken, date, and signature of the person responsible for its contents.

d. Machinery and Mechanized Equipment. All equipment shall be inspected prior to use on this contract. All equipment shall be re-inspected prior to use any time it is removed and subsequently returned to the contract site for use. Documentation of equipment inspections shall be made available to the Contracting Officer upon request. Tractors, in addition to trucks, shall be equipped with a first aid kit. Machinery and mechanized equipment used under this contract shall comply with the following:

(1) All equipment shall be properly guarded.

(2) When mechanized equipment is operated on floating plant, the Contractor shall provide positive and acceptable means of preventing this equipment from moving or falling in to the water. The type of equipment addressed by this clause includes front-end loaders, bulldozers, trucks (both on- and off-road), backhoes, track hoes, and similar equipment. If the Contractor plans to use such equipment on floating plant, an activity hazard analysis must be developed for this feature of work. The plan must include a detailed explanation of the type or types of physical barriers, curbs, structures, etc., which will be incorporated to protect the operator and prevent the equipment from entering the water. Nonstructural warning devices may be considered for situations where the use of structural barriers is determined to be impractical. The activity hazard analysis must thoroughly address the procedure and be submitted to the Corps for review and acceptance prior to start of this feature of work.

(3) The stability of crawler, truck, and wheel-mounted cranes shall be assured.

(i) The manufacturer's load-rating chart may be used to determine the maximum allowable working load for each particular crane's boom angle provided a test load, with a boom angle of 20 degrees, confirms the manufacturer's load-rating table.

(ii) Stability tests are required if: (a) there is no manufacturer's load-rating chart securely fixed to the operator's cab; (b) there has been a change in the boom or other structural members; or (c) there has been a change in the counterweight. The test shall consist of lifting a load with the boom in the least stable undercarriage position and at an angle of 20 degrees above the horizontal. The test shall be conducted under close supervision on a firm, level surface. The load that tilts the machine shall be identified as the test load. The test load moment (in ft.-lbs.) shall then be calculated by multiplying the horizontal distance (in ft.) from the center of rotation of the machine to the test load, times test load (in lbs.). Three-fourths of this test-load moment shall then be used to compute the maximum allowable operating loads for the boom at 20, 40, 60, and 80 degrees above horizontal. From these maximum allowable operating loads, a curve shall be plotted and posted in the cab of the machine in sight of the operator. These values shall not be exceeded except in the performance test described below. The test load shall never exceed 110 percent of the manufacturer's maximum rated capacity.

(iii) In lieu of the test and computations above, the crane may be load tested for stability at each of the four boom positions listed above.

(4) Performance tests shall be performed in accordance with Section 16 of EM 385-1-1. Performance tests shall be conducted after each stability test, when the crane is placed in service on a project, and at least every 12 months.

(5) Inspections shall be made which will ensure a safe and economical operation of both cranes and draglines. Specific inspections and their frequencies are listed on the appropriate checklists noted below. Results of inspections and tests for cranes shall be recorded on the Safety Inspection Check List, LMV Form 326R (available upon request) and inspection results for draglines shall be recorded on LMV Form 373R (available upon request). Copies of the inspections and tests shall be available at the jobsite for review. All stability and performance tests on cranes and all complete dragline inspections shall be witnessed by the Contracting Officer or his authorized representative.

(6) A complete dragline inspection shall be made: (a) at least annually; (b) prior to the dragline being placed in operation; and (c) after the dragline has been out of service for more than six months.

e. Crane Documentation and Equipment.

(1) Crane Documentation. Every crane shall have the following documentation at the time of operation:

(i) a copy of the operating manual developed by the manufacturer for the specific make and model of the crane;

(ii) a copy of the operating manual for any crane operator aids with which the crane is equipped;

(iii) the load rating chart for the crane which include: (a) the crane make and model, serial number, and year of manufacture, (b) load ratings for all crane operating configurations including optional equipment, (c) recommended reeving for the hoist line, and (d) operating limits in windy or cold weather conditions;

(iv) the crane's log book which shall be used to record operating hours and all crane inspections, tests, maintenance and repair.

(2) Crane Equipment. Every crane shall have the following equipment at the time of operation:

(i) a boom angle indicator and a load indicating device, or a load moment indicator/rated

capacity indicator (exempt are articulating boom cranes and those cranes used for duty cycle operations);

(ii) a means for the crane operator visually to determine the levelness of the crane;

(iii) drum rotation indicators to afford sensing by the operator (exempt articulating boom cranes);

(iv) a boom angle or radius indicator located within the operator's view (exempt articulating boom cranes);

(v) anti-two block devices (exempt articulating boom cranes and those cranes used for duty cycle operations).

f. First Aid/CPR Requirements. Two employees per shift/per site shall be certified in first aid and CPR.

g. Safety Sign. The Contractor shall furnish, erect, and maintain a safety sign at the site, as located by the Contracting Officer. The sign shall conform to the requirements of this paragraph and the drawing entitled "Safety Sign," included at the end of these Special Contract Requirements. The lettering shall be black, the castle red, and the background white. When placed on floating plant, the sign may be half size. Upon request, the Government will furnish a decal of the engineer castle. The sign shall be erected as soon as practicable, but not later than fifteen calendar days after the date established for commencement of work. The data required shall be current.

h. Means of Escape for Personnel Quartered or Working on Floating Plant. Two means of escape shall be provided for assembly, sleeping, and messing areas on floating plants. For areas involving 10 or more persons, both means of egress shall be through standard size doors opening to different exit routes. Where nine or fewer persons are involved, one of the means of escape may be a window (minimum dimensions 24" x 36") which leads to a different exit route. Refer to Section 19 of EM 385-1-1.

i. Emergency Alarms and Signals.

(1) Alarms. Emergency alarms shall be installed and maintained on all floating plant requiring a crew where it is possible for either a passenger or crewman to be out of sight or hearing from any other person. The alarm system shall be operated from the primary electrical system with standby batteries on trickle charge that will automatically furnish the required energy during an electrical-system failure. A sufficient number of signaling devices shall be placed on each deck so that the sound can be heard distinctly at any point above the usual background noise. All signaling devices shall be so interconnected that actuation can occur from at least one strategic point on each deck.

(2) Signals.

(i) Fire Alarm Signals. The general fire alarm signal shall be in accordance with paragraph 97.13-15b of the Coast Guard Rules and Regulations for Cargo and Miscellaneous Vessels, Subchapter I, Part 97, 1 OCT 92 (CG 257).

(ii) Abandon Ship Signals. The signal for abandon ship shall be in accordance with paragraph 97.13-15(c through e) of the reference cited in (a) above.

(iii) Man-Overboard Signal. Hail and pass the word to the bridge. All personnel and vessels capable of rendering assistance shall respond.

16. EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (EFARS 52.231-5000, March 1995).

a. This statement shall become operative only for negotiated contracts where cost or pricing data is requested, and for modifications to sealed bid or negotiated contracts where cost or pricing data is requested. This clause does not apply to terminations. See Basis for Settlement of Proposals of this section, 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 or V. 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.

NOTE: A copy of the manual can be obtained from the Government Printing Office (GPO) by calling telephone number (202) 512-1800. Collect calls will not be accepted.

17. CERTIFICATION REQUIREMENTS FOR BOATS.

All boats shall meet either BIA Standards for minimum flotation and capacity, or the certification requirements of the U.S. Coast Guard. The Contractor shall be required to provide satisfactory evidence of compliance. Such evidence shall be a certification by the boat manufacturer, combined with an inspection, to insure that the boat had not been altered in a manner that reduced the safety features; or sufficient tests that indicate compliance with the BIA Standards.

18. FUEL CONSUMPTION REPORTING REQUIREMENTS.

On the seventh day of each month, the Contractor shall furnish to the Government QAR a report of the quantities of fuel consumed during the previous month in execution of the work covered by the contract. The quantities reported shall include fuel consumed by the Contractor and all Subcontractors for the main plant and all support plant during the preceding month.

19. FUEL PRICE ADJUSTMENT.

a. The fuel price adjustment shall be made monthly for the Items identified below, upward or downward, to reflect the percentage change in the fuel price index of the Bureau of Labor Statistics (BLS) Producer Price Indices for #2 diesel fuel, WPU 057303. For the purpose of this clause, the term “fuel cost per contract unit” means that part of the contract unit price of the dredging operation that is attributable solely to the cost of fuel. The fuel cost per contract unit is established below:

<u>Description</u>	<u>Fuel Cost Per Contract Unit</u>
Shallow Draft Dredging	30% of the contract unit price
Deep Draft Dredging	30% of the contract unit price
Moving Upstream	35% of the contract unit price
Moving Downstream	35% of the contract unit price

b. The fuel price adjustment shall be calculated by multiplying the fuel cost per contract unit as determined from above, by the percentage change in the BLS Indexes, by the quantity of work performed. The percentage change in the index will be based on the index that is in effect at the time of award and the index in effect when the work is performed. Fuel price adjustments (up or down) will be calculated for each calendar month, and will be included in the monthly progress payments and final payment.

20. WAGE RATE ADJUSTMENT

a. This clause applies to contracts subject to area prevailing wage rate determination, and to contracts subject to collective bargaining agreements.

b. The Contractor warrants that the prices in this contract do not include any allowance for contingencies to cover increased costs for which adjustment is made under this clause.

c. Wage determinations are issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, US Department of Labor. The current wage determination as of the anniversary date on this multiple year contract shall apply.

d. The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wage rates and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of this multiple year contract. The amount of any increase is limited to the difference between the old actual wage and the new determined wage, regardless of the amount of the new actual wage. Conversely, the amount of any decrease is limited to the difference between the old determined wage and the new actual wage;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938, which is enacted after contract award, which affects minimum wage, and becomes applicable to this contract under law.

e. Any adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the accompanying increases or decreases in Social Security, unemployment taxes, and Workmen's Compensation insurance, but shall not otherwise include any amount for general or administrative costs, overhead, or profit.

f. The Contractor shall notify the Contracting Officer of any adjustment claimed under this clause within 30 calendar days of receiving a new wage rate determination, unless this notification period has been extended by the Contracting officer in writing. Nothing in this clause will preclude the Government from asserting a claim for a decrease within the period permitted by law. The Contractor's notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, which the Contracting officer may reasonably require. Upon agreement of both parties, the contract price or contract unit price labor rates will be modified in writing. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

g. The Contracting Officer or an authorized representative shall have access to, and the right to examine, any directly pertinent books, documents, records, or computer files of the Contractor

until the expiration of three years after final payment under this contract.

21. PERFORMANCE OF WORK BY CONTRACTOR (FAR 52.236-1-1984 APR).

The Contractor shall perform on the site, and with it's own organization, work equivalent to at least twenty percent (20%) of the total amount of the 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.

22. 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 termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

- a. 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.
- b. If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.
- c. Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.
- d. Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).
- e. 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. EFARS 52.249-5000

23. OBSTRUCTION OF NAVIGABLE WATERWAYS (DFARS 252.236-7002 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 obstruction(s) 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 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.).

24. PRIMARY DREDGING REGION.

a. **GENERAL.** The Government anticipates that dredging assignments will be routinely located in the primary dredging region described below. Assignments are also possible in other regions described in the paragraph entitled, Secondary Dredging Region, of this Section. The channel dimensions described below are authorized dimensions only. The Contractor may be given assignments that differ from these dimensions. The primary dredging region will include dredging at any point on the Mississippi River between Mississippi River Mile 953.8 Above Head of Passes (AHP) and New Orleans, Louisiana, Mississippi River Mile 106.0 AHP. The dredge will be used primarily to maintain or enlarge channels. It is not the intent of the contract to maintain harbor channels, but the dredge may be used in harbors at the discretion of the Contracting Officer. Dredging may be performed at any of these crossings as conditions dictate, and there may be multiple assignments at one or more crossings. Conversely, some crossings may not require dredging at all. Each dredging assignment in the primary region will be provided to the Contractor by the Contracting Officer. Disposal areas will also be as designated by the Contracting Officer. At most dredging locations, the dredged material shall be placed overboard into the designated disposal areas. Disposal of dredged material normally is placed at a distance of 800 to 1,000 feet from the dredge cut. The Contractor shall provide controlled surveys in accordance the subparagraph entitled, Survey Requirements, of Section 02482, to determine the extent and progression of dredging, and to maintain the designated discharge disposal locations for each assignment.

b. **DEEP DRAFT CROSSINGS BETWEEN NEW ORLEANS (MILE 106.0 AHP) AND BATON ROUGE (234.0 AHP), LOUISIANA.** The authorized channel dimensions are a 500-ft bottom width with a depth of - 45 feet, as measured from the Low Water Reference Plane (LWRP). The crossings listed below are located in New Orleans District, and shall be included in the routine dredging assignments. The list contains the names of the crossings, the length measured by the mile, and the LWRP National Geodetic Vertical Datum (NGVD). Reference Graph at the end of this Section.

Crossing	AHP Mileage range	LWRP NGVD (feet)
Fairview	111.0 to 117.0	1.05
Belmont	150.0 to 156.0	1.28
Rich Bend	155.0 to 160.0	1.30
Smoke Bend	172.0 to 179.0	1.39
Philadelphia	181.0 to 186.0	1.54
Alhambra	188.0 to 193.0	1.68
Bayou Goula	194.0 to 200.0	1.81
Granada	202.0 to 207.0	1.93
Medora	208.0 to 214.0	2.13
Sardine Point	216.0 to 221.0	2.42
Red Eye	221.0 to 226.0	2.62
Baton Rouge Front	229.0 to 234.0	3.00

c. SHALLOW DRAFT CROSSINGS, BETWEEN MISSISSIPPI RIVER MILES 234.0 AHP AND 953.8 AHP. The authorized dimensions are a 300-ft bottom width and a depth of 9 feet below the LWRP. The dredging assignments vary in location within this range, and will be assigned as necessary. The LWRPs for Smithland, Mile 299.0 AHP and Wilkinson Point, Mile 235 AHP shallow draft crossings are 11.56 and 3.22, respectively. LWRPs for shallow draft crossing assignments outside the New Orleans District will be provided in dredging assignments for such work.

25. SECONDARY DREDGING REGIONS.

a. Assignments are not routinely assigned in the secondary dredging regions, but may be made by the Contracting Officer. Secondary dredging regions include, but are not limited to, the following areas.

b. MISSISSIPPI RIVER, CUBIT'S GAP (MILE 4.0 AHP) AND SOUTHWEST PASS, LOUISIANA. Dredging in this region consists of a portion of the Mississippi River from Cubit's Gap, Mile 4.0 AHP to the Southwest Bar Channel, Mile 22.0 Below Head of Passes (BHP). The authorized dimensions of the channel are a 750-foot bottom width by a depth of - 45 feet below Mean Low Gulf (MLG) datum from Cubit's Gap to Mile 17.5 BHP, then narrowing to 600 ft wide at Mile 18.0 BHP and continuing through the jetty channel. Dredged material will be deposited, unconfined, into shallow open-water areas between the Southwest Pass Navigation Channel (at least 50 feet from the outside limit of the channel) and the existing foreshore dikes lining both sides of the channel, to a height not to exceed -14 feet MLG (see map at the end of this section). Open water disposal shall be directed by the Contracting Officer. The dredge and attendant plant requirements, along with operational procedures for the Primary and Secondary Dredging Regions shall be identical for open water disposal. In addition, a crew boat as described by the paragraph entitled Crew Boat, of Section 02482, will be required for the Mississippi River, Cubit's Gap and Southwest Pass.

c. UPPER MISSISSIPPI RIVER. Dredging may be required between St. Louis, Missouri, Mile 184.1 Upper Mississippi River (UMR) and Cairo, Illinois, Mile 0.0 UMR. All requirements

for shallow draft crossings as specified in the paragraph entitled Primary Dredging regions of this Section shall apply for this reach.

d. **TRIBUTARIES OF THE MISSISSIPPI RIVER.** Dredging may be required on tributaries of the Mississippi River of sufficient size to support dustpan dredging as required by these specifications. The tributaries may include the Red, Arkansas, and Missouri Rivers.

26. RIGHTS-OF-WAY.

a. The dredging assignments identified in these specifications are all within the navigable waters of the United States, and no additional right-of-way areas are required to perform the work.

b. The Contractor shall procure, at no cost to the Government, all additional lands, access roads, or rights-of-way desired for its convenience in the performance of the work. Any agreements or permits with levee boards, parishes, counties, or political subdivisions for moving material and equipment will also be the responsibility of the Contractor. Any delays to the Contractor resulting from procuring such additional lands, access roads, rights-of-way, or permits for moving material and equipment for the Contractor's own use will not be made the basis of any claim for increase in the contract cost. The Contractor shall determine the conditions, restrictions, and difficulties that may be encountered in the transportation of material and equipment to the work site.

27. CONTROL OF OPERATIONS.

The Contracting Officer will assign the location and scheduling of work to be performed under this contract. A Quality Assurance Representative will be present at all times during operations. The Contractor is responsible for the management and control of the dredge and attendant plant and supervision of all Contractor personnel.

28. NAVIGATION REQUIREMENTS.

a. **TRAFFIC COORDINATOR.** In order to minimize the risk of collision between shipping/towing interests and the dredging Contractor, the Contractor shall provide a traffic coordinator on a 24-hour per day basis when working between Mississippi River Mile 234.0 AHP and 22.0 BHP. The coordinator for each shift shall be a licensed U.S. Coast Guard Master Pilot. A coordinator shall be located aboard the dredge at all times the dredge is working. The coordinator shall use the appropriate communication equipment to advise shipping, towing interests, and the dredge crew of the current status of traffic and other pertinent information. No dredge crew member shall be used in a dual capacity to satisfy this requirement.

b. **V-Vessel T-Traffic S-Service (VTS)** is currently operating on the Mississippi River in the New Orleans District. The Contractor shall comply with VTS when commencing dredging operations between Mi. 234.0 AHP and 22.0 BHP. The Contractor shall notify the New Orleans Vessel Traffic Service of their location and the nature of the navigation impairment caused by their dredging operations. The Vessel Traffic Service is divided into the following sectors:

(1) Sector III, The Mississippi River from Mile 22.0 BHP to 159.5 AHP (VHF-FM Channel 14);

(2) Sector IV, The Mississippi River from Mile 159.5 to 234.0 AHP (VHF-FM Channel 11). New Orleans Traffic shall be advised of the Contractor's dredge and attendant plant movements within VTS geographic coordinates, and of any change to navigation impairment. Further information regarding VTS will be supplied by the Government if VTS resumes.

VTS, New Orleans
 1 Canal Place Suite 316
 365 Canal Street
 New Orleans, LA 70130
 TEL: (504) 589-2791 or 2777

The 24 hour telephone number for the Coast Guard Marine Safety Office may also be reached at 504-589-6261 for this information if the VTS office can not be reached.

c. **MOVEMENT OF NAVIGATIONAL AIDS.** The Contractor shall obtain permission from the Coast Guard prior to moving navigation aids. Any navigation aid which requires moving for accomplishment of dredging operations shall be restored as deemed appropriate by the Coast Guard as soon as possible. All movement of navigation aids by the Contractor shall be recorded daily on Form LMM 841 and submitted to the Government.

29. OBSTRUCTION OF THE CHANNEL

The Government will not undertake to keep the channel free from vessels or other obstructions, except to the extent of such regulations as may be prescribed by the Secretary of the Army, in accordance with the provision of Section 7 of the River and Harbor Act of 8 August 1917. The Contractor will be required to conduct the work in such a manner as to obstruct navigation as little as possible. If the Contractor's dredge and attendant plant obstructs the channel or endangers the passage of vessels, the dredge and attendant plant shall be promptly moved, on the approach of any vessel, to afford a practicable passage. Upon the completion of the work, the Contractor shall promptly remove its dredge and attendant plant and equipment, including ranges, buoys, piles, and other markers placed under this contract in navigable waters or on shore.

30. COOPERATION WITH OTHERS - USE OF GOVERNMENT PLANT OR OTHER CONTRACTS.

a. The Government may award other contracts for additional work in the area, or undertake work with its own personnel and equipment. The Contractor shall fully cooperate with such other Contractors or Government forces, and shall neither commit nor permit any act which may interfere with the performance of work by any other Contractor or Government forces.

b. If at any time during the terms of this contract, the navigation channel deteriorates to the extent:

(1) That navigation is obstructed and/or stopped due to natural causes; or

(2) That navigation is obstructed and/or stopped due to man-made causes; or

(3) That Government channel condition projections indicate navigation will be obstructed and/or stopped based on National Weather Service river stage data and /or U.S. Coast Guard and/or Corps of Engineers channel reconnaissance; and the Contracting Officer determines that the Contractor does not have the capability to restore the channel within a reasonable period of time; the Government reserves the right to restore the channel with Government or other plant. When Government or other plant is used to restore the channel, the Contractor's plant may be reassigned in accordance with the provisions of the paragraph of the General Requirements Section entitled "Inspection, Delivery, Prosecution, and Completion". The Contractor will not be paid for the work performed by Government or other plant and will not be charged for costs incurred by the Government in the use of such plant. The decision of the Contracting Officer to employ Government or other plant will be final and will not be subject to the Disputes Clause of this contract. The rights of the Government under this provision are not exclusive, but are in addition to all other rights reserved to the Government by the terms of this contract.

31. SEAWORTHINESS CERTIFICATION.

The dredge and attendant plant used on this contract and not subject to U.S. Coast Guard inspection and certification must be inspected and certified seaworthy by a reputable marine surveyor who is recognized in the trade. The certificate must be applicable for the intended use, must be less than one year old, and must be submitted to the Contracting Officer before the start of work. Reference the latest version of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, for additional regulations concerning Floating Plant and Marine Activities.

32. QUANTITY SURVEYS - ALTERNATE I (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 Contractor shall conduct the original and final surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

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. (FAR 52.236-16)

33. DESIGNATED BILLING OFFICE.

The designated billing office for this contract shall be the U. S. Army, Corps of Engineers, Memphis District, River Operations Section, MVM-CO-PR, 2915 Riverport Road, Memphis, TN 38019.

34. WORKING IN THE VICINITY OF STRUCTURES AND UTILITY CROSSINGS.

a. The Contractor shall exercise caution when working in the vicinity of structures, such as bridges, and utility crossings, such as pipelines and cables. If dredging to the assigned depth has the potential to endanger a particular structure or utility, the Contracting Officer may elect to reduce the extent of the required excavation in the vicinity of the structure or utility.

b. Unless otherwise directed, the Contractor shall provide at least project channel dimensions over all structures and utility crossings. The Contractor shall submit to the Contracting Officer a detailed plan of operation at each structure/utility crossing where surveys indicate project channel does not exist. The plan shall contain emergency measures to be taken in the event of an accident. The Contractor shall notify the owners of structures/utilities within 24 hours after Contractor receipt of a dredging assignment, and prior to operating within 500 feet of the particular structure or utility referencing the following:

(1) The anticipated date the dredge will work over the pipeline/utility.

(2) Depth and width of dredge cut over the pipeline/ utility.

(3) Point(s) of contact and telephone number(s),

(4) Emergency procedures.

(5) Any other information from the contractor the pipeline/utility owner would consider significant for safe dredging operations over the pipeline/utility crossing.

c. The Contractor shall also provide transportation and meals, for any representatives of owners of structures or utility crossings who are deemed necessary to be present for safety reasons, by the Contracting Officer's Representative, to remain aboard the dredge while the Contractor is working in the vicinity of these crossings.

d. The Government will not be responsible for any damages to structures or utilities, loss of service costs of such structures/ utilities, or damage to the Contractor's dredge and attendant plant.

e. Structures and utilities may exist in the primary and secondary dredging areas, which either may be in use or abandoned. The Contractor shall verify that dredging areas are clear of structures and utilities prior to working in the vicinity of the structures or utilities. If the Contractor detects a

structure or utility in a dredging area, the Contractor shall notify the Contracting Officer within 24 hrs of this occurrence.

f. The following structures or utilities are located within the principal limits of the work between miles 18.8 BHP and 735.2 AHP. Their locations are taken from permit files and navigation maps. Elevations of utilities were obtained from utility owners and were furnished at the time permits were issued. These elevations will be shown on the individual surveys when work is assigned. Elevations as shown will not be provided as a result of surveys made by the Government and it shall be the responsibility of the Contractor to verify the locations and elevations of these utilities. The Government will not be responsible for any damage to structures or utilities. Additional utility data will be supplied upon request or as required by dredging assignments. The Government makes no certification that the list shown hereafter is complete or current.

UTILITY CROSSINGS

**MILE 735 - MILE 435 AHP and
MILE 234 - MILE 113 AHP**

(Dimensions shown in the table are in inches and represent utility line diameters.)

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
735.2	submerged tel cable		AT&T (212) 605-5500
724.3	aerial crossing	92.5 ft above high water	
723.5	submerged gas lines		
664.0	submerged tel cable		South Central Bell (504) 528-7948
662.7	aerial crossing	89.0 ft above high water	Ark. Power & Light (504) 377-4000
659.9	aerial crossing	84.7' above high water	Ark. Power & Light (504) 377-4000
658.7	submerged gas line		Texas Gas Trans. Corp. (502) 926-8656
634.9	submerged telephone cable		South Central Bell (504) 528-7948
531.4	submerged gas pipeline		Texas Gas Trans. Corp. Corp. (502) 926-8656
531.3	telephone line bridge		South Central Bell (504) 528-7948
531.3	gasoline pipe		Texas Gas Trans. Corp. (502) 926-8656

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
531.0	submerged gas pipeline		Texas Gas Trans. Corp. (502) 926-8656
530.0	submerged gas pipeline		Tenn. Gas Trans. Corp. (504) 868-6785
530.0	submerged gas pipeline		Tenn. Gas Trans. Corp. (504) 868-6785
529.9	submerged gas pipeline		Texas Gas Trans. Corp. (502) 926-8656
529.85	submerged gas pipeline		Texas Gas Trans. Corp. (502) 926-8656
529.0	submerged gas pipeline		Texas Gas Trans. Corp. (502) 926-8656
528.8	submerged gas pipeline		Mich-Wisc. Pipeline (313) 496-0200
528.6	submerged gas pipeline		Mich-Wisc. Pipeline (313) 496-0200
524.3	submerged gas pipeline		Trunkline Gas Corp. (713) 627-5400
501.3	submerged gas pipeline		Columbia Gulf Trans Co. (713) 267-4100
500.8	submerged gas pipeline		Columbia Gulf Trans Co. (713) 267-4100
499.7	submerged gas pipeline		Columbia Gulf Trans Co. (713) 267-4100
494.4	submerged gas pipeline		Mid Valley Pipeline Co. (903) 757-0251
493.4	submerged oil pipeline		Mid Valley Pipeline Co. (903) 757-0251

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
479.8	submerged gas pipeline		Texas Eastern Trans. (713) 424-5511
479.0	submerged gas pipeline		Southern Natural Gas Co. (504) 545-2569
476.7	submerged gas pipeline		Southern Natural Gas Co. (504) 545-2569
474.9	submerged telephone cables		South Central Bell (504) 545-2569
471.8	submerged gas pipelines		Southern Nat. Gas Co. (504) 545-2569
437.1	submerged telephone cable		Western Union Tel. Co. (214) 918-1968
435.8	gas pipeline on bridge		Koch Gateway Pipeline Co. (713) 229-4123
435.6	submerged telephone cables		South Central Bell (504) 545-2569
234.2	submerged gas pipelines	-100 ft	Shell Oil Company (713) 241-6161
233.9	1-16" sub oil pipelines		Texas Pipeline Co. (318) 774-3541
233.9	3-10" sub gas pipelines		Monterey Pipeline Co. (713) 775-6944
233.9	1-4" sub fiber cable	-85 ft	MCI Telecommunications
233.7	1-16" sub gas pipelines	-105 ft	Monterey Pipeline Co. (713) 775-6944
233.7	2-10" pipelines		Pinto Pipeline Co. (713)623-3579

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
233.7	Waste discharge line		Kaiser Aluminum Chem. (510) 271-3300
233.6	3-10" sub gas pipelines		Monterey Pipeline Co. (713) 775-6944AHP
233.4	1-10" gas pipeline		Texaco, Inc. (914) 253-4000
233.1	1-16" pipeline		Monterey Pipeline Co. (713) 775-6944
233.0	5-10" submerged gas pipelines	-94 ft	Monterey Pipeline Co. (713) 775-6944
232.9	2-6" sub pipelines		Dow Chemical Company (318) 432-6659
232.8-	Aerial crossing/vert. cl. above H.W. 150'		Gulf States Util. Co (504) 383-0711
232.8	1-4 1/2" liquid hydrocarbon pipeline		Dow Chemical Company (318) 432-6659
232.8	discharge line		Kaiser Aluminum Chem. Corporation (510) 271-3300
232.7	5-9" submarine pipelines		Formosa Plastics Corp. (504) 356-3341
232.7	16" gas pipeline		Monterey Pipeline Co. (713) 775-6944
232.7	16" marine pipeline		Union Texas Petroleum (504) 642-2100
232.6	2-9" marine pipelines	-50 ft	Union Texas Petroleum (504) 642-2100

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
232.6	1-16" marine pipeline	-50 ft	Columbia Gas Trans. Co. (304) 357-2000
232.6	2-8" sub gas 1-6"		Columbia Gas Trans. Co. (304) 357-2000
232.6	2-8" marine pipelines	-80 ft	Solvay Process Co. (504) 356-3341
232.5	1-6" sub oil pipeline	-100 ft	Exxon Pipeline Co. (504) 273-2860
232.4	1-4" sub gas pipeline	-100 ft	Exxon Pipeline Co. (504) 273-2860
232.4	1-8" sub gas pipeline	-100 ft	Exxon Pipeline Co. (504) 273-2860
232.4	3-6" & 1-12" sub oil pipelines	-100 ft	Exxon Pipeline Co. (504) 273-2860
232.4	2-sub tel & tel cables		Exxon Oil & Ref Co. (504) 359-7711
232.4	7-8" sub oil pipelines 4-12" sub oil pipelines	-72 ft	Exxon Oil & Ref Co. (504) 359-7711
232.4	6-12" sub gas pipelines	-100 ft	Exxon Company, USA (504) 273-2860
232.4	1 sub 15.0 KV cable 4 sub 13.8 KV cables		Exxon Oil & Ref Co. (504) 359-7711
232.2	26" Discharge Lines		Formosa Plastics Corp. (504) 356-3341
232.1	5-10 3/4" gas pipelines		Monterey Pipeline Co. (713) 775-6944
232.0	2-6 5/8" sub pipelines		Dow Chemical Co. (318) 432-6659

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
232.0	32- 6"-24" oil, gas and electric lines	-75 ft	Exxon Pipeline Co. (504) 273-2860
231.8	2-submarine lines		Formosa Plastics Corp. (504) 356-3341
231.8	32 oil, gas and pet. lines		Exxon Pipeline Co. (504) 273-2860
231.6	1-sub elect. power cable		Exxon Oil & Ref Co. (504) 359-7711
231.5	1-12" sub oil pipeline		Exxon Oil & Ref Co. (504) 359-7711
230.8	2" discharge line		Gen. Chem. Div. Allied Chem. (800) 522-8001
230.6	2-subtel & tel cables		South Central Bell (504) 528-7948
230.5	conduit/cable crossing	-40 ft	Bell South Telecommunications 1-800-877-0428
230.2	1-sub tel cable		Western Union Tel. Co. (214) 918-1968
230.0	1-sub tel & tel. cable		South Central Bell (504) 528-7948
229.5	3-subtel & tel cables		South Central Bell (504) 528-7948
229.5	sub cable		Southern Bell Tel.&Tel. (404) 529-8611
229.1	6-sub tel cable		South Central Bell (504) 545-2569

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
228.1	2-pipelines		Texaco, Inc. (914) 253-4000
226.3	3-6",3-12" & 1-8" sub LPG pipelines	-80 ft	Exxon Pipeline Co. (504) 273-2860
225.7	2-10" & 1-6" sub gas pipelines	-55 ft	Union Texas Petroleum (504) 383-4000
224.2	aerial crossing		Gulf States Util. Co. (504) 383-0711
209.0	2-18",1-20" & 4-6" sub gas pipelines		Texaco (914) 253-4000
209.0	1-12" & 2-10" sub nitrogen pipelines		Air Products and Chemical (215) 481-4911
205.6	discharge line		Big Three Industries (713) 868-0333
201.2	aerial crossing		Gulf States Util. Co. (504) 383-0711
199.7	1-8" gas pipeline		Exxon Company, USA (504) 273-2860
196.0	transmission line		Louisiana Power & Light Co., N.O. LA (504) 383-0711
194.7	1 sub power cable		Louisiana Power & Light Co., N.O. LA (504) 383-0711
191.9	2-4" sub gas pipelines		Polaris Corp. (713) 993-0960
191.6	1-2" sub gas pipeline	-20 ft	Polaris Corp. (713) 993-0960

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
190.2	4-12 3/4" sub gas pipelines		Southern Natural Gas Pipeline Co. (504) 545-2569
190.0	1-24" & 1-30" gas pipelines	-75 ft	Southern Natural Gas Pipeline Co. (504) 545-2569
189.9	4-12 3/4" pipelines		Southern Natural Gas Pipeline Co. (504) 545-2569
189.7	3-8 5/8" pipelines	-40 ft	Shell Pipeline Corp. (713) 241-6161
187.4	1-20" sub carbon dioxide	-80 ft	Shell Pipeline Corp. (713) 241-6161
185.9	3-6" sub pipelines		Mobil Oil Corp. (504) 279-9481
185.8	4-6" sub gas pipelines		Mobil Oil Corp. (504) 279-9481
185.6	3-20" sub gas pipelines		Allied Chemical Corp. (312) 329-9895
185.3	1-20" sub gas pipeline		LA Intrastate Gas Corp.
185.3	1-6", 1-10" & 1-20" sub gas pipeline		Mobil Oil Corp. (504) 279-9481
185.3	1-12" sub gas pipeline		Sugar Bowl Gas Co. (504) 447-2611
184.7	4" oil pipe		Shell Oil Co. (713) 241-6161
184.7	pipeline		Shell Oil Company (713) 241-6161

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
183.7	20" waste pipeline		Wyandotte Chem. Corp. (BASF) (800) 832-4357
183.6	14" disposal line		Lummus Company (706) 322-4511
183.6	3-12 3/4" sub gas pipelines	-50 ft	Union Texas Petroleum (504) 642-2100
183.5	6", 10", 20" pipelines		Union Texas Petroleum (504) 642-2100
183.5	2-12" sub gas pipelines		Sugar Bowl Gas Co. (504) 447-2611
183.3	1-12 3/4" & 1-20" sub gas pipelines		Acadian Gas Pipeline (504) 446-2791
183.3	3-20" sub gas pipelines		Koch Gateway Pipeline Co. (713) 229-4123
183.2	discharge lines		Shell Chemical Co. (713) 241-6161
183.2	2-12 3/4" sub brine/butane	-57 ft	Texas Brine Corp. (504) 369-6657
183.2	3-20" gas pipelines		Koch Gateway Pipeline Co. (713) 229-4123
183.2	2-10" sub gas pipelines	-70 ft u&l	Shell Pipeline Corp. (713) 241-6161
182.7	disposal pipelines		Vulcan Materials Co. (205) 877-3000
182.4	3-8" gas pipelines	-50 ft	Monterey Pipeline Co. (713) 775-6944

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
182.2	3-8" pipelines	-67 ft	Monterey Pipeline Co. (713) 775-6944
182.2	3-8" sub gas pipelines	-98 ft	Enterprise Pipeline Co. (318) 477-7640
181.5	Pipelines		Rock Island Oil & Refining Company (504) 529-5281
175.5	pumping station (intake)		St. of LA, Dept. of Transportation (504) 379-1100
175.4	submarine cable	-38 ft	Southern Bell Tel. & Tel. Co. (404) 529-8611
175.4	3 sub tele tel cables		South Central Bell (504) 528-7948
175.2	1 sub power cable		Louisiana Power & Light Co. (504) 383-0711
174	sewage line		City of Donaldsonville Dept. of Sanitation (504) 473-0658
173.6	pipelines		CF Industries, Inc., Donaldsonville Nitrogen Complex (504) 473-8291
169.2	1-20" sub gas pipeline		Monterey Pipeline Co. (713) 775-6944
167.8	1-18" sub oil pipeline		Texas Pipeline Co. (318) 774-3541

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
166.1	1-6" sub gas pipelines		Koch Gateway Pipeline Co. (713) 229-4123
163.4	2-20" & 2-30" sub gas pipelines		Transcontinental GLP Corp. (703) 368-3255
162.7	2-12" submarine pipelines	-57 ft	Texas Brine Corp. (504) 369-6657
159.4	2-30" sub petroleum pipelines	-85 ft	Marathon Pipeline Co. (419) 422-2121
159.4	2-40" sub petroleum pipelines	-77 ft	Shell Pipeline Corp. (713) 241-6161
159.2	1-8" sub gas pipeline		Acadian Gas Pipeline Sys. (504) 446-2791
158.2	1-6" sub gas pipeline	-60 ft	United Gas Pipeline Co. (504) 777-4300
154	Intake line 10" water intake 6" discharge cables		St. James Parish (504) 562-7431
151.9	Submarine cable		Louisiana Power & Light Co. (504) 383-0711
151	Intake line, 1" water intake		St. James Parish (504) 562-7431
151	20" waste pipeline		Wyandotte Chem. Corp. (BASF) (800) 832-4357
145.8	1 sub power cable		Louisiana Power & Light Co. (504) 383-0711

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
145.7	1 sub power cable		Louisiana Power & Light Co. (504) 383-0711
145.3	2-12" sub pipelines		Cypress Gas Pipeline Co. (318) 424-2031
145.1	2-10" sub gas pipelines		Exxon Pipeline Co. (504) 273-2860
141.0	2-4" sub gas pipelines		St. John the Baptist Parish (504) 652-9569
138.2	3-10" sub gas pipelines		United Gas Line, Shreveport
138.2	2-10" sub gas pipelines		United Gas Line, Houma
138.1	1 sub gas pipeline		United Gas Line, Shreveport
138.0	2-10" sub gas pipelines		United Gas Line, Shreveport
135.7	1-12" sub chemical	-135 ft	Air Products and Chemical (215) 481-4911
133.9	3 sub tel cables		South Central Bell (504) 528-7948
129.2	1-20" sub gas pipeline		Texaco, Inc. (914) 253-4000
129.1	3-18" sub gas pipelines		Riverway Gas Pipeline
129.0	1 sub power cable		Louisiana Power & Light Co. (504) 383-0711

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
127.0	1-12" & 1-8" sub nitrogen/oxygen	-138 ft	Big Three Industries (713) 868-0333
126.7	2-16", 3-6" & 3-4" sub gas pipelines	-80 ft	Shell Pipeline Corp. (713) 241-6161
126.3	1 sub cable		South Central Bell (504) 528-7948
120.9	1 sub cable		South Central Bell (504) 528-7948
120.5	1 sub cable		South Central Bell (504) 528-7948
119.7	2-20" sub gas pipelines 1-20" sub gas pipeline	-100 ft -65 ft	Shell Pipeline Corp. (713) 241-6161
119.7	2-10" sub gas pipelines	-90 ft	Shell Pipeline Corp. (713) 241-6161
119.6	2-24" sub gas pipelines		United Gas Pipeline Co. (504) 777-4300
119.3	1-16" & 2-20" sub gas pipelines		United Gas Pipeline Co. (504) 777-4300
119.1	2-24" sub gas pipelines	-80 ft	Shell Pipeline Corp. (713) 241-6161
118.4	1 sub cable		South Central Bell (504) 528-7948
118.0	1 sub power cable		Louisiana Power & Light Co. (504) 383-0711
115.52	submarine cable		Louisiana Power & Light, N.O., LA (504) 383-0711

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
115.39	submarine cable		Louisiana Power & Light Co., N.O., LA (504) 383-0711
115.3	submarine cable		Louisiana Power & Light Co., N.O., LA (504) 383-0711
115.2	submarine cable		Louisiana Power & Light N.O. Co. (504) 383-0711
115.0	10" pipeline jet fuel		Exxon Pipeline Co. (504) 273-2860
113.95	submarine cable		Southern Bell Tel. & Tel. Co. (404) 529-8611
113.7	1 1/2" pipeline		U.S. Coast Guard, N.O., LA (504) 942-3020
113.3	submarine cable		Southern Bell Tel. & Tel. Co. (404) 529-8611
113.2	2 sub cables		South Central Bell (504) 528-7948
113.1	2 sub tel cables		South Central Bell (504) 545-2569

UTILITY CROSSINGS
UPPER MISSISSIPPI RIVER
MILE 184.1 - MILE 0.0 UMR

(Dimensions shown in the table are in inches and represent utility line diameters.)

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
183.4	10" gas pipeline	-34.04	Mississippi River Transmission (314) 991-9900
183.4	10" gas pipeline	-26.78 ft	Illinois - Montana Pipeline Company
183.2	10" gas pipeline	-29.9 ft	Mississippi River Transmission (314) 991-9900
183.2	2-138KV transmission lines	152.61 ft	Union Electric Co. (314) 554-2469
183.2	5" communication line	-28.9 ft	AT&T Corporation (816) 251-5382
182.2	8-electrical lines	-22.4 ft	Union Electric Co. (314) 554-2469
181	10" gas pipeline		Laclede Pipeline Co. (314) 658-5484
180.5	10" gas pipeline		Laclede Pipeline Co. (314) 658-5484
180.5	5-electrical lines	-13 ft	Union Electric Co. (314) 554-2469
179.1	138KV transmission line	124.79 ft	Union Electric Co. (314) 554-2469

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
178.9	2-138KV transmission lines	123.94 ft	Union Electric Co. (314) 554-2469
178.2	transmission line		Somilia Brothers (212) 998-9244
178.1	transmission line		MonsantoChemical Co. (314) 694-1000
177.9	transmission line	-13.54 ft	Monsanto Chemical Co. (314) 694-1000
177.8	138KV transmission line	123.94 ft	Union Electric Co. (314) 554-2469
176.6	telephone cable	-21.71 ft	Soconoy Vacuum Oil Co.
176.6	6" gas pipeline	-21.71 ft	Soconoy Vacuum Oil Co.
175.8	14" gas pipeline	-36.07 ft	Explorer Pipeline Co. (918) 493-5100
172	138KV transmission line	128.76 ft	Union Electric Co. (314) 554-2469
171.2	2-16" gas pipelines	-28.7 ft	Mississippi River Transmission (314) 991-9900
171	1-6", 2-8" & 3-10" gas pipelines	-38.52 ft	Phillips Petroleum Co. (405) 338-1707
168	4-10" & 2-14" gas pipelines		Mississippi River Transmission (314) 991-9900

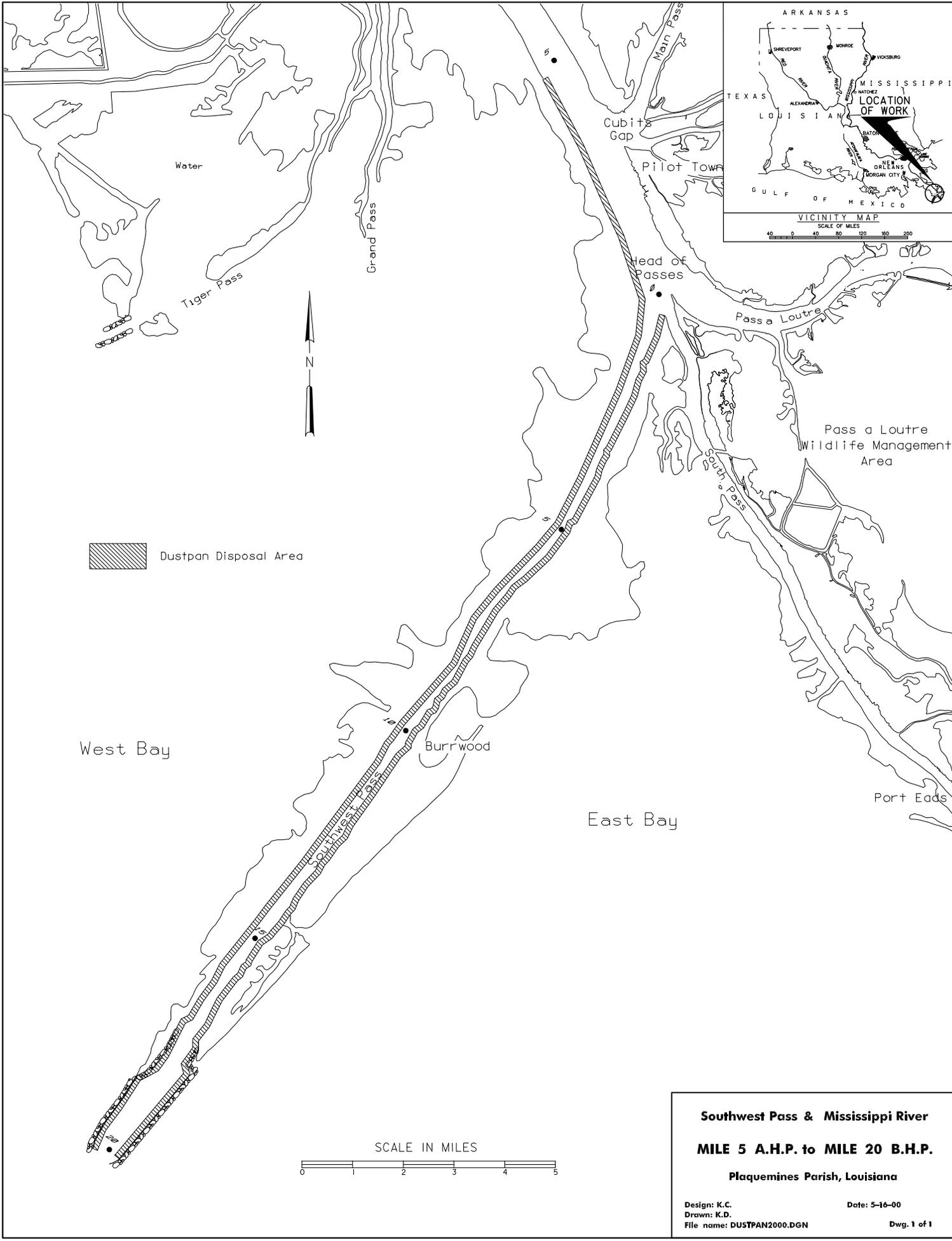
AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
165.3	telephone cable	-25.61 ft	Mississippi River Fuel Corp. (314) 991-9900
161.8	138KV transmission line	121.84 ft	Union Electric Co. (314) 554-2469
153.1	10" oil pipeline	-17.2 ft	Gulf Central Pipeline (713) 957-3724
153.1	10" oil pipeline	-14.2 ft	Gulf Central Pipeline (713) 957-3724
153	2-5" communication lines	-30.74 ft	AT&T Corporation (816) 251-5382
148	132KV transmission line	115.8 ft	Union Electric Co. (314) 554-2469
127.6	2-26" gas pipelines	-36.59 ft	Mississippi River Transmission (314) 991-9900
127.5	4-10" gas pipelines	-19.48 ft	Mississippi River Transmission (314) 991-9900
120.4	transmission line	-13 ft	Montana - Illinois Railroad Co.
118	3-7200 electric lines		Egyptian Elec. Co-Op (618) 684-2143
109.9	20" oil pipeline	103.99 ft	Mobil Oil Pipeline Co. (214) 742-3106
108	20" oil pipeline	-35.27 ft	Mobil Oil Pipeline Co. (214) 742-3106

AHP MILE	TYPE	VERTICAL CLEARANCE	OWNER
81.9	138KV transmission line	116.3 ft	Union Electric Co. (314) 554-2469
81.8	13000 electric line		Grand Tower Power Plant (618) 565-2318
81.4	3-20" gas pipelines	-43.5 ft	Natural Gas Pipeline Co. (314) 243-2367
80.7	2-30" gas pipelines	62.73 ft	Natural Gas Pipeline Co. (314) 243-2367
46.3	2-24" oil pipelines	-21.73 ft	Texas East. Trans. Co. (615) 872-5144
46.4	20" gas pipeline	-22.16 ft	Texas East. Pipeline Co. (713) 759-3636
45.4	161KV transmission line	116.2 ft	Union Electric Co. (314) 554-2469
44.7	2-16" gas pipelines	-22.39 ft	Texas East. Pipeline Co. (713) 759-3636
40.4	345KV transmission line	119.5 ft	Union Electric Co. (314) 554-2469

UTILITY CROSSINGS

MISSISSIPPI RIVER SWP MILE 3.5 AHP – MILE 18.8 BHP

UTILITY OR STRUCTURE	APPROX MILE	APPROX C/L STA	ELEV MLG (ft)	NAME & ADDRESS OF OWNER
(6) 5/8" dia. Gas Pipeline	1.9 BHP	162+60	-79.7	Vastar Resources, Inc. P.O. Box 51408 Lafayette, LA 70505-1408 (318) 264-4000
20" dia Gas Pipeline	4.5 BHP	302+67	-80.0	Tenn. Gas Pipeline Sugar Mill Point 1115 Regal Row Houma, La 70360 (504) 868-6785
4", 6", and 8" dia. Oil & Gas Pipeline Bundle	4.8 BHP	318+78	-87.0	Chevron USA, Inc P.O. Box 6056 New Orleans, LA 70174 (504) 364-2292
8" dia. Pipeline	8.9 BHP	531+26	90.0	Chevron USA, Inc P.O. Box 6056 New Orleans, LA 70174 (504) 364-2292
36" dia. Gas Pipeline	11.7 BHP	680+50	-78.0	Tenn. Gas Pipeline Sugar Mill Point 1115 Regal Row Houma, La 70360 (504) 868-6785



 Dustpan Disposal Area

SCALE IN MILES



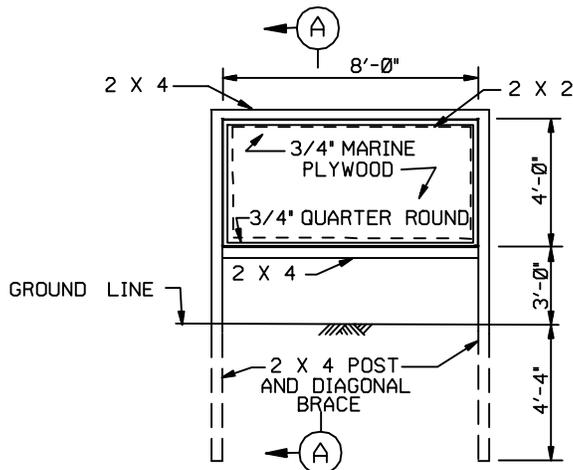
Southwest Pass & Mississippi River
MILE 5 A.H.P. to MILE 20 B.H.P.
Plaquemines Parish, Louisiana

Design: K.C.
 Drawn: K.D.
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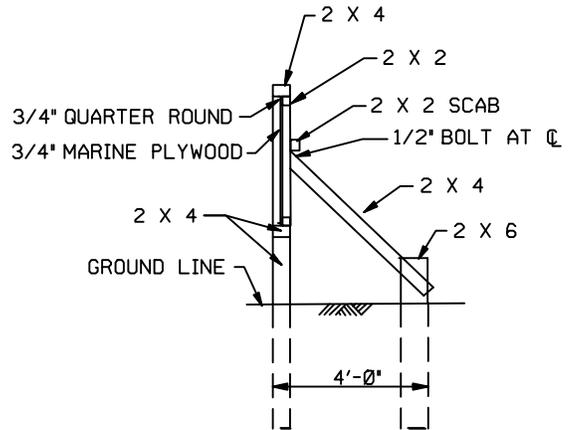
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 Dwg. 1 of 1



ELEVATION



ELEVATION



SECTION A-A

NOTES:

1. CONTRACTOR SHALL CONSTRUCT AND MAINTAIN A DURABLE SIGN AS SHOWN.
2. WOOD IN CONTACT WITH GROUND SHALL BE TREATED LUMBER.
3. ALL EXPOSED SURFACES SHALL BE WHITE HOUSE PAINT.
4. LETTERING SHALL BE BLACK.
5. ENGINEER CASTLE DECAL FURNISHED BY GOVERNMENT.
6. 22 GA. SHEET METAL MAY BE USED IN LIEU OF PLYWOOD.



**US Army Corps
of Engineers**

Memphis District

ENGINEER CASTLE DETAIL

SCALE: NONE

MARCH 1995

U.S. ARMY ENGINEER DISTRICT, MEMPHIS
CORPS OF ENGINEERS
MEMPHIS, TENNESSEE

SAFETY SIGN

TECHNICAL SPECIFICATIONS

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DIVISION 1 - GENERAL REQUIREMENTS

SECTION 01025

MEASUREMENT AND PAYMENT

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SECTION 01025
MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.1 LUMP SUM PAYMENT ITEMS

1.1.1 GENERAL. Payment items for the work of this contract for which lump sum payments will be made are listed in the Bidding Schedule of Section 00010 and are described below. All costs for items of work, which are not specifically mentioned to be included in a particular lump sum payment item, shall be included in the listed lump sum item most closely associated with the work involved. The lump sum price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor Quality Control, meeting safety and environmental requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

1.1.2 LUMP SUM ITEMS

(1) Mobilization and Demobilization

a. Payment will be made for all costs associated with operations necessary for mobilization and demobilization as specified in Section 00800. Payment for this item shall include the cost of moving the dredge and attendant plant to Baton Rouge, Louisiana (Mile 234 AHP) upon mobilization and from this location upon demobilization. If delivery or release of the dredge is required at an alternate location that requires farther towing, payment will be made for the additional towing at the price per mile for "Moving Upstream" or "Moving Downstream", as applicable. If delivery or release of the dredge is required at an alternate location which requires less towing, an amount will be deducted from payment based on the reduced mileage and the price per mile for "Moving Upstream" or "Moving Downstream", as applicable. The additional mileage to be paid or the reduced mileage to be deducted from payment will be measured as specified in the paragraph entitled Moving Upstream or Moving Downstream of this section from Mile 234 AHP to the alternate delivery/release location.

b. Unit of measure, lump sum: LS.

1.2 UNIT PRICE PAYMENT ITEMS

1.2.1 GENERAL

Payment items for the work under this contract on which the contract progress payments will be based are listed in the Bidding Schedule of Section 00010 and are described below. The unit price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, fuel, supplies, repair parts, materials, and equipment, and performing any associated

Contractor quality control, surveys, tests, and reports, meeting safety and environmental requirements, and for performing all work required for each of the unit price items.

(1) Interim Demobilization - Mobilization.

a. Payment for “Interim Demobilization – Mobilization” will be made at the contract lump unit price for "Interim Demobilization - Mobilization". Forty percent (40%) of the unit price will be paid upon completion of each interim demobilization at the Contractor designated demobilization site. The remaining sixty percent (60%) will be paid upon completion of each interim mobilization at the designated dredging assignment. Payment will be made for all costs associated with operations necessary for interim mobilization and interim demobilization. Payment for this item shall be exclusive of the cost of moving the dredge and attendant plant. Moving to a designated dredging assignment upon interim mobilization and moving from a dredging assignment to the Contractor designated interim demobilization site will be paid based on the applicable price per mile for “Moving Upstream” or “Moving Downstream.” Interim demobilization will not be paid after completion of the final dredging assignment. Demobilization from the final dredging assignment will be paid as specified under the bid item for “Mobilization and Demobilization.”

b. Unit of measure, Each: EA.

(2) Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant.

a. General.

(i) All of the Contractor’s fixed costs required for the dredge and attendant plant shall be placed in this bid item. Fixed costs as used in this paragraph means those cost incurred by the Contractor should no dredging be performed. Payment for these fixed costs will be made monthly. These fixed costs will be paid in addition to the other applicable line items of the schedule whether in a dredging status or not.

b. Measurement.

Measurement will be by the month: MO.

c. Payment.

Payment for “Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant ” will be made at the contract unit price per month or portion thereof.

d. No payment will be made at any time when the dredge is shut down for any of the following reasons:

(i) Time during which the dredge and attendant plant is engaged in dredging for others including the time to move to and from the contract locations.

(ii) Time lost due to shutdowns ordered by the Contacting Officer due to noncompliance with the current version of the Safety and Health Requirements Manual, EM 385-1-1.

(iii) Lay-time upon completion of a dredging assignment where the Contractor has failed to notify the Government of assignment completion, in accordance with the paragraph of this section entitled "Inspection, Delivery, Prosecution, and Completion";

(iv) Time lost when, through fault or negligence of the Contractor, the necessary equipment is not available or in operating condition at the new assignment;

(v) Time lost due to shutdowns for the repair or the replacement of worn out or unserviceable equipment;

(vi) Time during which the dredge is engaged in removing misplaced material as required in paragraph of section 00800 entitled "Misplaced Material";

(vii) Time lost due to insufficient crew to perform efficiently and safely the required dredging operations. (See the paragraph entitled Crew of Section 002482);

(viii) Time lost due to late arrival of tow boats;

(ix) All other lost time occurrences that are due to the fault or negligence of the contractor.

(3) Shallow Draft Dredging Between Mile 184.1 UMR and Mile 0.0 UMR; Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP; Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP; and Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass Mile 22.0 BHP.

a. Measurement.

These items will be measured for payment using a hydro survey of the dredging assignment in accordance with the provisions of Quantity Surveys - Alternate I of Section 00800 and the paragraph entitled Survey Requirements in Section 02482. The quantity of material dredged will be computed as measured between the before and after construction profiles.

b. Payment.

Payment will be made for the cubic yards dredged within the pay prism at the applicable contract unit price per cubic yard for “Shallow Draft Dredging Between Mile 184.1 UMR and 0.0 UMR;” “Shallow Draft Dredging Between Mile 953.8 AHP and Mile 234.0 AHP;” “Deep Draft Dredging Between Mile 234.0 AHP and Mile 106.0 AHP;” and “Deep Draft Dredging Between Mile 4.0 AHP and Southwest Pass Mile 22.0 BHP.” Payment of the quantity of material removed outside of the specified two-foot tolerance limits for over depth dredging will not be made (See Section 02482, paragraph entitled Dredging Prism and Overdepth Dredging). The unit price for this item shall not include fixed cost as measured and paid for under “Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant.” Payment for any quantities dredged on a tributary of the Mississippi River will be made at the applicable unit price for the reach of Mississippi River in which the tributary is located. Incidental operations that are to be included in the price per cubic yard may include, but are not limited to the following:

- (i) preparation of the dredge and attendant plant to move from one job to another;
- (ii) making changes in discharge pipeline such as adding pipeline and pontoons as may be necessary for the progress of work;
- (iii) removing logs, driftwood, etc., from the pump, discharge pipeline, and/or suction head; removing drift from pipeline and washing out pipeline before handling;
- (iv) encountering old revetments, stone, and/or pile dikes within the dredge cuts;
- (v) During a single setup, dropping the dredge back to position on another cut after completing a previous cut;
- (vi) Moving the dredge to the next setup location, from the previous setup location where dredging has been completed, within the same dredging assignment;
- (vii) Adjusting the dustpan and any other portion of dredge to work in either shallow or deep water depths;
- (viii) Waiting for vessels to pass during normal dredging operations, by moving the dredge out of the channel.
- (ix) Refueling operations that interfere with dredging operations.
- (x) Providing the services of a traffic coordinator and complying with other requirements of the paragraph entitled Navigation Requirements in Section 00800.
- (xi) Performing hydro surveys in accordance with Section 02482.

- c. Unit of measure, cubic yard: CY.

(4) Moving Upstream Below Mile 953.8 AHP; Moving Upstream Above Mile 0.0 UMR; Moving Downstream Below Mile 953.8 AHP; and Moving Downstream Above Mile 0.0 UMR.

- a. Measurement.

Measurement for actual miles moved will be determined using the “Flood Control and Navigation Maps of the Mississippi River” in effect at the time of the directed move. Mileage shall be calculated to the nearest 1/10 of a mile for payment purposes.

- b. Payment.

Payment for the actual miles to move the dredge and attendant plant between dredging assignments, during interim mobilization to a dredging assignment, and from a dredging assignment during interim demobilization will be paid at the contract unit price per mile for “Moving Upstream Below Mile 953.8 AHP;” “Moving Upstream Above Mile 0.0 UMR;” “Moving Downstream Below Mile 953.8 AHP;” and “Moving Downstream Above Mile 0.0 UMR.” The unit price for this item shall not include fixed cost as measured and paid for under “Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant.”

- c. Unit of Measure. The unit of measure will be by the mile: Mile

(5) Standby Time Below Mile 953.8 AHP and Standby Time Above Mile 0.0 UMR.

- a. Measurement.

Measurement for Standby Time will be measured by the hour to the nearest whole hour.

- b. Payment.

Payment for Standby Time will be for the period that the Contractor’s dredging or towing operation is shut down for any of the following reasons:

- (i) Encountering inclement weather (fog, high water, wind, tornadoes, hurricanes, thunderstorms, icing conditions, etc). This includes time for moving to and from a safe location.

- (ii) Channel closures ordered by the U. S. Coast Guard Marine Safety Officer.

- (iii) Contracting Officer directed standby, and any other circumstances that are not due to the fault or negligence of the Contractor and approved by the Contracting Officer.

Standby time will be for the period commencing when the dredge and attendant plant is placed in a standby status and shall continue until the dredge is back in operation. The contract price per hour for "Standby Time Below Mile 953.8 AHP" and "Standby Time Above Mile 0.0 UMR" shall include the contractor's costs for holding his dredge, attendant plant, and crew on site until dredging or towing operations are resumed. The unit price for this item shall not include fixed cost as measured and paid for under "Dredge Fixed Costs for One Hydraulic Pipeline Dustpan Dredge and Attendant Plant."

- c. Unit of Measure. The unit of measure will be by the hour: HR

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

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SECTION 01431

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SECTION 01431**ENVIRONMENTAL PROTECTION****1. SCOPE.**

a. The work covered by this section consists of furnishing all labor, materials, and equipment, and performing all work required for the prevention of environmental pollution during and as a result of dredging operations and related activities, except for those measures set forth in other technical portions of these specifications.

b. Environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which:

1. Adversely affect human health or welfare;
2. Unfavorably alter ecological balances of importance to human life;
3. Affect other species of importance to man; or
4. Degrade the utility of the environment for esthetic and recreational purposes.

c. The control of environmental pollution requires consideration of air, water, and land, and involves noise abatement, solid waste management, of radiant energy, and management of radioactive materials, as well as other pollutants.

2. QUALITY CONTROL.

a. **GENERAL.** The Contractor shall establish and maintain quality control for environment protection, to assure compliance with contract specifications. The Contractor shall also maintain records of quality control for all dredging operations, including but not limited to the following:

1. Environmental pollution control plan;
2. Applicable Federal, State, and Local pollution control regulations;
3. Air Pollution - dust, smoke, noise, etc.;
4. Water Pollution - disposal of water, oil, etc.;
5. Land Pollution - debris disposal, restoration of temporary construction sites, etc.; and
6. Training course for employees.
7. Corrective action(s) taken to remediate any Contractor-related environmental violations.

b. **REPORTING.** The original and two copies of these records shall be furnished daily to the Government Inspector.

3. NOTIFICATION OF NONCOMPLIANCE.

The Contracting Officer will notify the Contractor, in writing, of any noncompliance with the environmental clauses and the corrective action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. 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 part of time lost due to such a stop order shall be made the subject of a claim for time extensions or for excess costs or damages.

4. SUBCONTRACTORS.

Subcontractor compliance with the environmental clauses shall be the responsibility of the Contractor.

5. IMPLEMENTATION.

Within 120 hours after the Contractor's receipt of notice to proceed, the Contractor shall:

a. Submit in writing proposals for environmental pollution control and disposal of debris.

b. Meet with representatives of the Contracting Officer to develop mutual understandings relative to compliance with this provision, and administration of the environmental pollution control program.

6. PROTECTION OF WATER RESOURCES.

a. **CONTAMINATION OF WATER.** The Contractor shall not pollute any body of water with fuels, oils, bitumens, calcium, chlorides, herbicides, insecticides, or other materials harmful to fish, shellfish, or wildlife, or with materials which may be a detriment to outdoor recreation. The sole exception to this clause is those pollutants already existing in the dredged material, which might enter the water as a result of the dredging operations.

b. **DISPOSAL OF MATERIALS.** Disposal locations for waste materials, effluents, trash, garbage, oil, grease, chemicals, etc., shall not be allowed within project right-of-way limits, nor shall harmful debris enter any waterway or wetland environment as a consequence of the Contractor's action under this contract; prevent the use of the area for recreation; or present a hazard to wildlife. Disposal methods shall be in accordance with applicable Federal, State, and Local regulations and shall be discussed in the

written plan required by the clause entitled "Implementation", Paragraph (a), of this section.

7. PROTECTION OF FISH AND WILDLIFE.

The Contractor shall conduct work in such a way that will prevent any interference with or disturbance to fish and wildlife.

The Contractor shall not alter natural water flows or otherwise disturb natural habitat adjacent to or within the project area.

8. JANITORIAL SERVICES.

a. The Contractor shall furnish daily janitorial services for the dredge and attendant plant during the entire life of the contract. The bathroom facilities shall be kept clean and sanitary at all times. Facilities for the storage, preparation, and serving of food will likewise be kept clean and sanitary. Services shall be performed at such a time and in such a manner to least interfere with operations, but need only be accomplished when the facilities are in daily use.

b. The Contractor shall provide daily trash collection and cleanup of the dredge and attendant plant. Debris disposal shall be performed in a manner approved by the Contracting Officer and shall be discussed in the written plan required by the clause entitled "Implementation", Paragraph (a), of this section.

9. MAINTENANCE OF POLLUTION CONTROL FACILITIES DURING OPERATIONS.

The Contractor shall maintain all facilities constructed for pollution control as long as the operations creating the particular pollutant are being carried out, or until the material concerned has become stabilized to the extent that pollution is no longer being created. Early in the contract period the Contractor shall conduct a training course that will emphasize all phases of environmental protection. The Contractor shall notify the Contracting Officer of the scheduled date and time for this course so that the Contracting Officer's representative can attend.

10. REPORTING OF POLLUTION SPILLS (33 CFR 153.203).

If an oil spill or chemical release occurs during the performance of this contract, the Contractor is required to contact the National Response Center at 1-800-424-8802, as soon as possible. If telephone communications are not possible, the nearest US Coast Guard office may be contacted by radio to report the spill. The Contractor shall comply with the instructions from the responding agency concerning containment and cleanup of the spill, and shall provide the Contracting Officer with a complete written report of the incident.

11. POLYSTYRENE AND OTHER CHEMICALLY FORMED FLOTATION COLLAR MATERIAL USED FOR DREDGE PIPELINES.

The Contractor shall be responsible for removal of all debris caused by the use of polystyrene floating pipelines, at the dredge site or any other locations used to install, store, or repair the floating pipeline. Suitable banding, mesh, or other covering will be required on the polystyrene floating pipeline to prevent deterioration during normal dredging operations. The discharge line will conform to lighting requirements set forth by the US Coast Guard in the "Rules of the Road, International-Inland".

12. WATER QUALITY MONITORING.

The Contractor shall assist the Government, using available on-site plant and manpower, in monitoring the water quality aspects of the dredging and disposal operations.

13. RECORDING AND PRESERVING HISTORICAL AND ARCHAEOLOGICAL FINDS.

Items having any apparent historical or archaeological interest, which are discovered in the course of any contract activities, shall be carefully preserved. The Contractor shall leave the archaeological find undisturbed, and shall immediately report the find to the Contracting Officer, so that the proper authorities may be notified.

14. ENVIRONMENTAL LITIGATION.

a. If the performance of all or any part of the work is suspended, delayed, or interrupted, due to an order of a court of competent jurisdiction as a result of environmental litigation, then the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor, or a subcontractor at any tier not required by the terms of the contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor, or a subcontractor at any tier, other than acts required by the terms of the contract, then such suspension, delay, or interruption shall be considered as if it had been ordered by the Contracting Officer, under the terms of the Contract Clause entitled "Suspension of Work". The period of suspension, delay, or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

b. The term "environmental litigation" means a lawsuit alleging that the work has an adverse effect on the environment or

that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

15. WORK IN QUARANTINED AREAS.

The work called for in this contract involves activities in parishes (counties) which have been quarantined by the Department of Agriculture to prevent the spread of certain plant pests that may be present in the soil. All land based equipment shall be thoroughly cleaned of all soil residues prior to removal from the work site, using water under pressure. 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 a quarantined area, the Contractor shall comply with the provisions of ER 1110-1-5 and attachments. A copy of the regulation shall be made available by the Contracting Officer upon request. The Contractor shall assure compliance with the regulation by all subcontractors.

16. MEASUREMENT AND PAYMENT.

No measurement or separate payment will be made for environmental protection. The cost of providing environmental protection as specified herein shall be distributed throughout the existing bid items.

17. WARRANTY.

The Contractor warrants to the Government quiet and peaceable work in the herein-described dredging regions, and in case of any disturbance, by suit or otherwise, will defend the same free of charge to the Government in or before the proper State or United States courts.

DIVISION 1 - GENERAL REQUIREMENTS

SECTION 01451

CONTRACTOR QUALITY CONTROL

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SECTION 01451

CONTRACTOR QUALITY CONTROL

PART 1 GENERAL

1.1 REFERENCES (Not Applicable)

1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all costs associated therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 GENERAL

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause entitled "Inspection of Construction." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product that complies with the contract requirements. The system shall cover all construction operations, both on-site and off-site, and shall be keyed to the proposed construction sequence.

3.2 QUALITY CONTROL PLAN

3.2.1 General

The Contractor shall furnish for review by the Government, within 21 days after receipt of Notice of Award of the contract, a Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause entitled "Inspection of Construction." The plan shall identify personnel, procedures, control, instructions, test, records, and forms to be used. The Government will consider an interim plan for the first 15 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

3.2.2 Content of the CQC Plan

The CQC plan shall include, as a minimum, the following to cover all construction operations, both on-site and off-site, including work by subcontractors, fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three phase control system for all aspects of the work specified. The staff shall include a CQC system manager who shall report to the project manager or someone higher in the Contractor's organization. Project manager in this context shall mean the individual with responsibility for the overall management of the project including quality and production.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents.
- e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test.
- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures will establish verification that identified deficiencies have been corrected.
- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task that is separate and distinct from other tasks and has separate control requirements. It could be identified by different trades or disciplines, or it could be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there is frequently more than one definable feature under a particular section. This list will be agreed upon during the coordination meeting.

3.2.3 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The

Government reserves the right to require the Contractor to make changes in his CQC plan and operations including removal of personnel, as necessary, to obtain the quality specified.

3.2.4 Notification of Changes

After acceptance of the QC plan, the Contractor shall notify the Contracting Officer in writing a minimum of seven calendar days prior to any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

3.3 COORDINATION MEETING

After the Pre-Construction Conference, before start of dredging, and prior to acceptance by the Government of the Quality Control Plan, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both on-site and off-site work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting shall be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures that may require corrective action by the Contractor.

3.4 QUALITY CONTROL ORGANIZATION

3.4.1 CQC System Manager

The Contractor shall identify an individual within his organization at the worksite who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. This CQC System Manager shall be subject to acceptance by the Contracting Officer. The CQC System Manager shall be assigned as System Manager but may have other duties in addition to quality control. The CQC System Manager must have completed the Corps of Engineer's training course entitled "Construction Quality Management for Contractors". This course is periodically offered by the Memphis District as well as other Corps Districts.

3.5 SUBMITTALS (Not Applicable)

3.6 CONTROL

The controls shall include at least three phases of control to be conducted by the CQC System Manager for all definable features of work, as follows:

3.6.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work and shall include:

- a. A review of each paragraph of applicable specifications.
- b. A review of the contract drawings.
- c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. A check to assure that provisions have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for constructing the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that phase of work.
- i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. The Government shall be notified at least 24 hours in advance of beginning any of the required action of the preparatory phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.6.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

- a. A check of preliminary work to ensure that it is in compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verification of full contract compliance. Verify required control inspection and testing.

- c. Establish acceptable level of workmanship.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government shall be notified at least 24 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.
- g. The initial phase should be repeated for each new crew to work on-site, or any time acceptable specified quality standards are not being met.

3.6.3 Follow-up Phase

Daily checks shall be performed to assure continuing compliance with contract requirements, including control testing, until completion of the particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work that may be affected by the deficient work. The Contractor shall not build upon or conceal non-conforming work.

3.6.4 Additional Preparatory and Initial Phases

As determined by the Government, additional preparatory and initial phases may be conducted on the same definable features of work if the quality of on-going work is unacceptable, if there are changes in the applicable CQC staff, on-site production supervision or work crew, if work on a definable feature is resumed after a substantial period of inactivity, or if other problems develop.

3.7 TESTS (Not Applicable)

3.8 NOT USED

3.9 DOCUMENTATION

The Contractor shall maintain current records providing factual evidence that required quality control activities and/or tests have been performed. These records shall include the work of subcontractors and suppliers and shall be on an acceptable form that includes, as a minimum, the following information:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.

- c. Work performed each day, giving location, and description.
- d. Test and/or control activities performed with results and references to specifications/drawings requirements. The control phase should be identified (Preparatory, Initial, Follow-up). List deficiencies noted along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals reviewed, by whom, and action taken.
- g. Off-site surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.

These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Government daily within 24 hours after the date(s) covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every seven days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC System Manager. The report from the CQC System Manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

3.10 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the worksite, shall be deemed sufficient for the purpose of notification. 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 part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --

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SECTION 02482**DREDGING****1. GENERAL.**

a. This contract is for maintenance and construction dredging in the navigational channels of the Mississippi River and Tributaries, and Southwest Pass. The Contractor shall furnish, operate, and maintain a hydraulic pipeline dustpan dredge and attendant plant, including crew, conforming to these specifications, complete in all respects, including necessary materials, supplies, transportation, and labor to complete the assigned work.

b. All floating plant shall comply with all applicable US Coast Guard (USCG) regulations, US Public Health Service (USPHS) regulations, and the latest version of the U.S. Army Corps of Engineers, Safety and Health Requirements Manual, EM 385-1-1 and the Occupational Safety and Health Act (OSHA) Standards. No separate payment will be made for compliance with EM 3851-1, or for compliance with any of the other safety-related special requirements.

c. The Government will not be responsible for the dredge and attendant plant or any Government property aboard the dredge or attendant plant or any accidental damage thereto during the period of the contract. The Contractor shall release the Government and its Officers and Agents from all responsibility for damages to dock facilities, submerged and aerial crossings, bridges, moored vessels, sunken objects, or other damages ordinarily covered by fire and marine insurance.

2. DREDGE.

a. The dredge shall be adequately powered and geared and properly equipped for the pump size and horsepower used. The dredge shall be required to maintain a minimum production rate of 4,800 cubic yards per pumping hour, as measured with the dustpan head at a depth of 35 feet, cutting a 6-foot face, discharging through 800 feet of floating pontoon pipeline, and pumping medium-grained clean sand. If site conditions are such that this production rate cannot be obtained as determined by the Contracting Officer, a lesser rate will be allowed based upon full performance of the dredge under the actual conditions encountered. The dredge shall have a dustpan and water agitation jet assembly attached to the suction pipe. The dustpan shall be designed to function such that it can accommodate the dredge in meeting or exceeding the specified dredging requirements listed herein. Drafts of the floating plant shall not exceed 9-ft, and shall be capable of working efficiently in as little as 10-ft of water depth, and in currents up to 15-ft per second (fps). The plant shall be required to perform dredging within the range of 12-ft to 60-ft in depth for Lot 1. For Lot 2, the plant shall be required to dredge within the range of 12-ft to 60-ft in depth during the first base year, and within the range of 12-ft to 75-ft for the remainder of the contract. The dredge shall be self-propelled to dredge efficiently and move to permit passage of other vessels while working in a 300-ft to 750-ft-wide channel. When the dredge has ceased dredging and moved out of the channel to allow vessel passage, the hauling wires shall be slacked and lowered completely to the water bottom, to avoid wire entanglement with these passing vessels.

b. The Contractor shall have available at all times a minimum of one extra pump impeller suitable for the dredge pump.

3. DREDGE SENSORY EQUIPMENT.

a. The dredge shall be equipped with recording vacuum and pressure gauges, and a pump engine recording tachometer, which reports in real time during dredging, pipeline pressure (lbs./sq. in.), pump vacuum (LB/sq. in.), and pump revolutions per minute (RPM) at rated drive of the prime mover. On dredges equipped with and using a ladder pump, the recording vacuum gage will not be required.

b. The dredging sensory equipment shall be in good operating condition during dredging. The dredge leverman shall use the aforementioned required gauges, meters, and all other available sensory equipment, to maximize dredge production during dredging operations.

c. The dredge shall be equipped with a radar unit as a navigation safety aid in inclement weather and for nighttime operations. The radar unit shall have a minimum 8-hour battery power backup system, to maintain continuous operation of the unit in case of power failure of the dredge's main power source.

d. The Contractor shall provide a depth sounding device on the dredge, capable of obtaining continuous depth sounding measurements in the area of the dredge hull, which shows the elevation of the cut made by the dredge, and the elevation of the top of the bank which is being dredged. The data obtained by the depth-sounding device shall be displayed in the lever room of the dredge. The dredge shall be equipped with a DGPS electronic positioning system for use in conjunction with depth sounding positioning, and in locating the dredge at assignments provided by the Contracting Officer. The depth-sounding device and electronic positioning system mounted on the dredge shall meet the requirements specified elsewhere in this Section. These devices are required in addition to the equipment required for the survey boat, as stated in the Survey Requirements paragraph of this Section. Range-range electronic positioning systems will not be accepted. The Contractor shall maintain adequate supplies, parts, and materials to keep the equipment in proper operating condition. The equipment shall be maintained as specified by the manufacturer.

4. ATTENDANT PLANT.

a. GENERAL. Attendant plant shall be composed of fuel, derrick, water, landing, and tank barges, and other barges and attendant/auxiliary plant as required for operations under these specifications, whether or not items are specifically mentioned. The attendant plant shall be in good condition and of sufficient size and capacity to efficiently serve the dredge. The Contractor shall arrange for a supply of repair parts to be on hand when needed for the dredge and each kind of attendant plant. Fuel barges and water barges shall comply with applicable US Public Health Service Regulations, and all floating plant shall comply with USCG regulations. All skiffs used on this contract shall have a minimum hull length of 18 ft.

b. TENDERS. Two (2) tenders shall be required of such size and design that either can adequately serve the dredge and attendant plant in river currents up to 15 fps. These tenders shall be capable of working in as little as 5 feet of water. Each tender shall be of steel construction, twin screw, with conventional shallow draft workboat design. Self-propelled derrick or anchor barges or other compatible attendant plant may be substituted on approval of the Contracting Officer. At all times during the work season of 1 May to 31 December, or at any time contract work is performed during the non-work period, the tenders shall be maintained in operating condition regardless of the pay status of the dredge. Each tender shall be equipped with:

(1) VHF radio for ship-to-ship communications, as described in the paragraph of this Section entitled "Communications Equipment"; and

(2) Navigation radar, as described in the paragraph of this Section entitled "Navigation Radar". The tender shall be available for use by Government personnel on request. Government personnel shall be given priority use whenever possible. Refer to EM 385-1-1, Sections 19.C, for additional crew and equipment requirements.

c. DISCHARGE PIPELINES.

(1) All discharge pipelines shall be maintained in good condition. Leaks occurring in the pipeline shall be promptly stopped and repaired.

(2) The floating pipeline, and all associated equipment, shall be considered as part of the dredge attendant plant.

(3) Dredging operations in the primary dredging region shall require a floating discharge pipeline ranging from 800 feet to 1,000 feet in length. The discharge pipeline shall be supported by floating catamarans, small barges, or pontoons, and shall have bracing of sufficient strength and stability to adequately support the pipe during dredging and towing operations in up to 15-fps currents. The discharge pipeline shall have a baffle plate for discharging overboard, which will be used to direct the discharge pipeline to either side of the dredge when the dredge pump is operating and discharging either dredged materials or raw water through the pipeline. The pipeline shall have a baffle plate operator control house positioned near the effluent point of the pipeline for controlling pipeline movements. The pipeline shall be capable of operating as required in up to 15-fps currents. The pipeline shall have a catwalk with handrails, for personnel walking access to pontoon house. The floating discharge line and all components, shall be lighted and safely equipped and designed as stated in EM 385-1-1, Sep 1996 Edition.

d. LANDING BARGE.

The Contractor shall furnish a landing barge for personnel access at river landing locations directed by the Contracting Officer. The landing barge, railings and stairways shall conform to the safety requirements of EM 385-1-1, Sep 1996 Edition. The Contractor shall install radio equipment on the landing barge for communications with the dredge. The radio equipment shall be housed so that it is protected from damage as a result of adverse weather conditions.

e. TANK BARGES.

Tank barges need not be manned, unless in the opinion of the Officer-in-Charge, Marine Inspection Office, US Coast Guard, such manning is necessary for the protection of life and property and for the safe operation of the vessels; provided, however, that towing vessels, while towing barges which need not be manned, shall carry in the regular complement of the towing vessel and shall have on board at all times while towing, at least one licensed officer or certified tankerman. (CG 123, para. 35.35-1, 1 Aug 77, or 46 CFR Subchapter D).

5. SURVEY REQUIREMENTS.

a. SCOPE. Surveying requirements consist of furnishing all plant, labor, equipment, materials, and supplies, and performing all operations necessary for the required surveys as specified herein.

b. SURVEY EQUIPMENT.

(1) SURVEY BOAT. The Contractor shall furnish one survey boat, having a total of 180 minimum horsepower, at least twin-screwed, not less than 20 ft in overall length, with sufficient enclosed space for the survey crew and shall meet all applicable US Coast Guard Regulations. The minimum full-time crew for the survey boat shall be one operator for the day shift, plus any survey personnel required to operate the equipment. Refer to the latest version of the Safety and Health Requirements Manual, EM 385-1-1, paragraph 19.c., for additional crew and equipment requirements. The survey boat shall bear a plate of certification for minimum boat flotation by the Boating Industry Association (BIA). The survey boat shall be equipped with:

(i) A DGPS electronic positioning system, as described in the paragraph entitled, DGPS Electronic Positioning Equipment, of this Section;

(ii) Air conditioning for the enclosed cabin;

(iii) VHF radio for ship-to-ship communications, as described in the paragraph entitled, Communications Equipment, of this Section;

(iv) A recording depthsounder as described in this Section.

(2) DEPTHSOUNDERS.

(i) SYSTEM CHARACTERISTICS. The survey vessel shall be equipped with a dual high and low frequency (about 26 kHz) depthsounder. It shall be capable of recording depths from a minimum depth of 4 feet. below the transducer to a maximum depth of at least 100 ft. The depthsounder shall be accurate to + 0.1ft. The transducer shall be mounted within the vessel so as to insure optimal depthsounder performance. The depthsounder shall have a sounding rate of at least 15 soundings/sec. It shall be capable of automatic time varied gain (TVG) adjustments. The unit shall also have manual controls that allow vessel draft, water level (+) and speed of sound

adjustments. Analog depthsounder recordings shall be made on a dry thermal or electrostatic paper medium. Chart paper operational speeds shall be within a range of 1-8 in./min. The vertical scaling shall be at minimum 1 in. per 10 ft. of water depth. Draft, tide and speed of sound settings must be automatically annotated on the chart. The depthsounder must be capable of manual event marking. A remote digital depth display shall be provided to the dredge helmsman or survey boat operator. If the depthsounder is electronically interfaced with a positioning survey system, all recorded digitized depth soundings must be annotated on the analog paper chart with an event mark and its event designation. The operational chart paper speed utilized shall not cause any event mark/event designation overwrites.

(ii) CALIBRATION. The QAR will be present at all depthsounder calibrations. The speed of sound calibration method will be approved by the COR. A calibration shall be performed at the start of each day, when the vessel moves to another survey locale and after any maintenance is performed on the depthsounder (to include chart paper replacement). Once the calibration is complete, no speed of sound adjustment shall be made until the next calibration. The depthsounder shall be calibrated at a depth equal to 80% of the maximum expected survey depth or at a depth of 40-ft. (whichever is less). The analog chart paper recording of the calibration shall be provided to the COR.

(3) DGPS ELECTRONIC POSITIONING EQUIPMENT. The Contractor shall furnish and maintain DGPS electronic positioning systems, capable of providing 24-hour real-time latitude, longitude, and horizontal positioning, within a tolerance of + or - 5 feet, for the dredge and survey boat. Each system shall each be equipped with a track indicator, magnetic media recorder (Floppy or CD-ROM disk, IBM-compatible ASCII format), and a 750-C Hewlett Packard Ink-Jet plotter or equal. The systems must be capable of accepting programmed waypoints, and giving a course between waypoints. The track indicators must show deviations from programmed course. The magnetic media recorders shall record position fixes in Universal Transverse Mercator (UTM) X and Y coordinates and associated depths from the depth sounders. The plotter shall show courses steered, in real time, and must also be capable of plotting digitized depth data from the depth sounders. The position-indicating instrument consoles and track indicators shall be installed in the pilothouse of the dredge in plain view of the helmsman. This same equipment shall also be installed on the Survey Boat in plain sight of the survey boat operator.

(i) CALIBRATION OF DGPS EQUIPMENT. Prior to initiating positioning surveys using DGPS electronic survey equipment, a calibration test of the electronic measuring device shall be performed verifying that channel center line as indicated by center line ranges and DGPS electronic positioning coincide. This shall be done in the presence of the Contracting Officer's Representative. Calibration checks shall be run at the beginning of each survey or portion thereof. Should the electronic measuring device fail to indicate the channel centerline within the factory-defined error range for the device, the device shall not be used for determining survey positions.

c. SURVEYING.

(1) GENERAL. All record surveys shall be performed in the presence of the Government's QAR. All surveys will be performed under the direction of a qualified survey technician.

(2) GOVERNMENT FURNISHED SURVEY DATA. The Government may or may not perform a hydro survey of the dredging assignment depending upon availability of survey personnel and equipment. If a hydro survey is performed, the Government will provide a plotted hydro survey sheet and/or a diskette containing a Hypack file for the dredging assignment. The Government survey is for reference only, and does not relieve the Contractor of performing before, interim, and after dredging hydro surveys as specified below. Bench Mark/Elevation within the dredging assignment area will be provided if requested.

(3) FIELD SURVEYS. The Contractor is responsible for obtaining hydro surveys of the dredging and disposal areas prior to and immediately following completion of each dredging assignment. Before commencing dredging operations, the Contractor shall make a DGPS before construction hydro survey that shall show all existing buoys and channel markers within the specified dredging assignment. The data from this survey shall be plotted by the Contractor on a layout sheet. This survey shall be made available to the QAR not later than 24 hours after arrival at each dredging assignment. Once the QAR receives this sheet, a dredging layout will be made by the QAR. The before and final after dredging surveys will be used as the basis for all pay yardage computations, unless otherwise authorized by the QAR. This information shall be recorded in Universal Transverse Mercator (UTM), X and Y coordinates with corresponding depths. These depths shall be made to the nearest 0.1-foot. The depths from these surveys shall be converted to the applicable Vertical Datum, or recorded as actual depths as referenced to the nearest benchmark, and contoured to the desired project depth. These surveys shall be labeled with the applicable date, time, water surface, and scale to which the survey is plotted and the name of the surveyor performing the survey. These surveys shall be made on intervals of no more than 100 feet (cross sectional areas). These intervals shall cover the entire dredging assignment area, including the disposal area, and for a distance of 1,000 feet above and below the upper and lower limits of the dredging assignment area(s), unless otherwise authorized by the QAR. All soundings shall be made at no more than 20-foot intervals. During the progress of the work, interim surveys shall be made of the completed dredge cut(s) to ensure they have been made to the specified grades/elevations and material is not moving back into the previously made cut(s). This interim survey data shall be made a matter of daily records to be utilized if additional dredging is required. If additional dredging is required, due to filling, these interim surveys will be the basis for additional dredging payment purposes.

(4) SURVEY DATA. Plotted surveys and other applicable data shall be kept at each dredging location at all times and made available to the QAR upon request.

6. SUBSTITUTION OF THE DREDGE.

a. A substitute dredge may be allowed, provided the Contractor furnishes written justification, the Contracting Officer agrees to the substitution, and the following conditions are met:

(1) The substitute dredge meets all of the requirements of this contract and the Contractor submits clear evidence the substitute dredge performs at or above the minimum production rate.

(2) The Government is reimbursed for all costs related to inspection of the substitute dredge, if such inspection is required.

(3) The substitute dredge is delivered before the original dredge is shut down and moved from the dredging assignment. The substitute dredge shall be ready to begin pumping material as soon as the original dredge is removed from service. This requirement does not apply to substitutions made during standby or release periods.

(4) Mobilization and demobilization costs of the substitute dredge shall be borne by the Contractor and no additional payment will be made under this contract.

7. CREW.

a. The Contractor shall furnish all necessary crew and supervision required for the safe and efficient operation of the dredge and attendant plant. The crew on the dredge shall be of sufficient number and have the ability to perform operations such as clearing pumps and suction, adding or removing floating pipeline and operating attendant plant, anchor derrick, tenders and motor launch simultaneously.

b. Each absent crewman shall be relieved by a qualified replacement. The Contractor shall remove from duty any crew person who, in the opinion of the Contracting Officer, is objectionable or incompetent. This requirement shall not be made the basis of any claim for compensation or damages against the United States or any of its officers or agents.

c. All operators of boats exceeding 26 feet in length shall possess a current valid operator's license, issued by the US Coast Guard, for the class of vessel being operated. The Contractor is responsible for insuring that Subcontractors comply with this requirement.

8. FUEL TRANSFER OPERATIONS.

The Contractor shall furnish at its own expense all labor, fuel and necessary equipment for transportation of fuel to the dredge and attendant plant. A sufficient number of crew shall be on duty to perform transfer operations. In the case of unmanned barges, a certified tankerman shall be on duty to perform the transfer operation.

9. COMMUNICATIONS EQUIPMENT.

a. GENERAL. The Contractor shall furnish and maintain the following communications equipment for the dredge and attendant plant for the period of the contract. Final approval of the plant will not be made until all communications equipment is installed and operational.

b. CELLULAR TELEPHONE. The Contractor shall provide a cellular telephone aboard the dredge. This phone shall be made available for use by the Government's QAR on a 24 hour per day basis. The QAR shall only use this equipment to conduct Government business.

c. MARINE VHF-FM RADIO. The Contractor shall also furnish and maintain one VHF-FM ship's radio transceiver for the dredge, with power not in excess of 25 watts, and output of at least 15 watts on the maritime frequencies of 156.800 (Channel 16) and 156.375 (Channel 67) MHz, 16F3 emission, + or - 5 KHz with 4.5 KHz deviation. This equipment shall be operated in accordance with FCC regulations.

d. The dredge shall be equipped with either a radio or telephone, which shall be used to provide oral communications between the dredge operator and the discharge pipeline operator in the pontoon house.

e. The Contractor shall have a facsimile machine to receive dredging assignments, as specified by the paragraph entitled, Inspection, Delivery, Prosecution, and Completion, of Section 00800.

10. NAVIGATION RADAR.

The survey boat and crew boat shall be equipped with navigation radar for use in inclement weather and at night. All radar equipment used under this contract shall be installed in such a way as to continue functioning on battery power in the event of generator failure. All additional attendant plant to be operated at night must also be radar equipped.

11. REPORT OF OPERATIONS.

a. DAILY REPORTS. The Contractor shall complete a Daily Report of Operations using ENG Form 4267. The completed form shall be provided to the QAR no later than 1200 hours for the previous day's work.

b. MONTHLY REPORTS. The Contractor shall provide a monthly report using ENG Form 4267 that compiles all daily dredging data for the previous month or portion thereof. The Contractor shall retain a copy of this monthly report. The monthly report shall be provided no later than the 7th day of the month.

c. YEARLY REPORT. Within 7 calendar days after the end of the calendar year, the Contractor shall submit an annual report, using ENG Form 4267 that consolidates all of the monthly reports.

d. DISTRIBUTION OF REPORTS. All reports, whether daily, monthly, or yearly, shall be distributed to:

U.S. Army Engineer District
River Operations Section, CO-PR
2915 River Port Road
Memphis TN 38109

The Contractor shall maintain a file of all reports. All the above reports shall become a part of the permanent contract file. Further instructions for the preparation of the reports will be furnished at the preconstruction conference.

12. CREW BOAT.

If there is a need to perform dredging in “Southwest Pass”, the contract will be modified under the Changes Clause to provide an equitable adjustment for the addition of a crew boat meeting the following criterion. The Contractor shall furnish one diesel-powered crew boat, twin-screwed, not less than 40 feet in overall length, with enclosed space for six passengers, meeting all applicable US Coast Guard regulations for vessels 65 feet or less in length, and certified by the US Coast Guard. The crew boat shall only be required when working within the Mississippi River, from the area known as Cubit’s Gap, Mile 4.0 AHP to Mile 22.0 BHP. The crew boat shall be equipped with:

- (1) Air conditioning and Heating;
- (2) VHF radio for ship-to-ship communications, as described in the Clause of this Section entitled “Communications Equipment”; and
- (3) Navigation radar, as described in this Section.

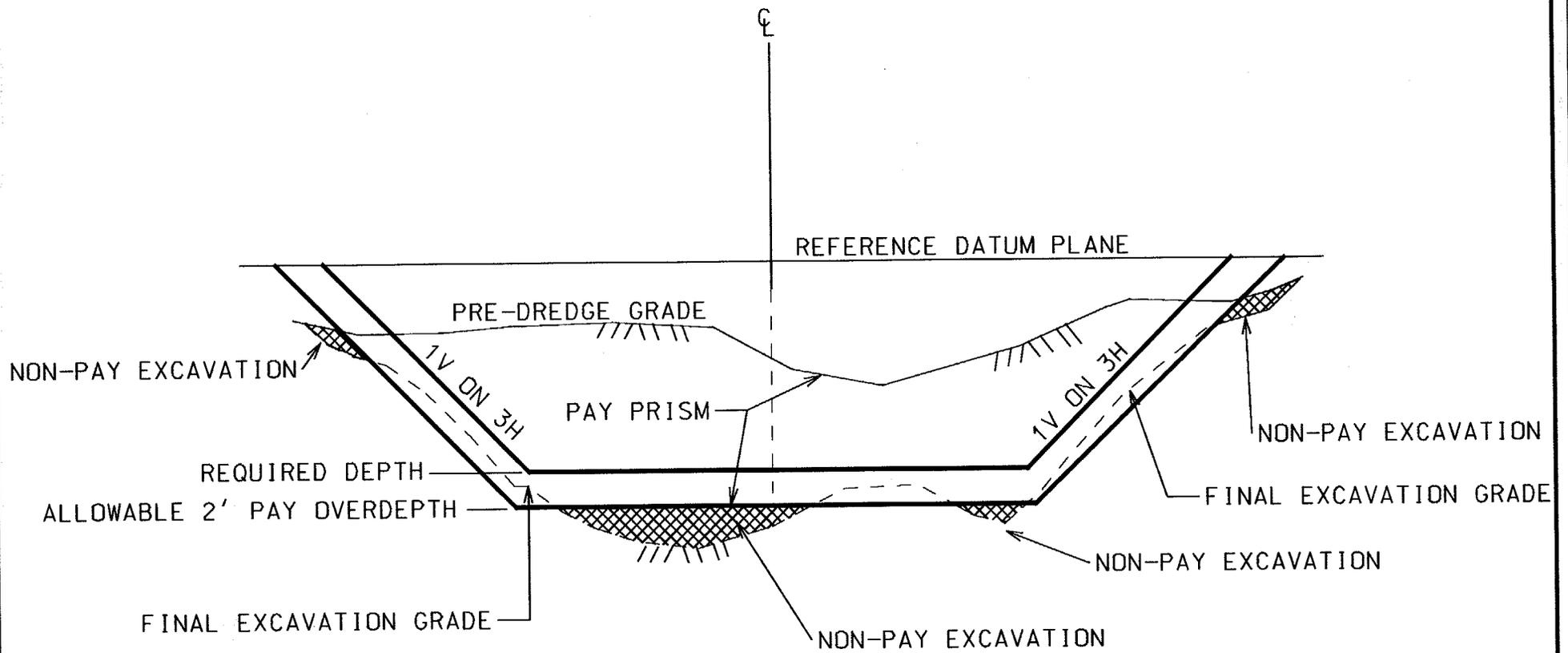
The crew boat shall be required to operate on a 24-hour per day schedule. The crew boat shall be available for use by Government personnel on request. The crew boat shall be used to transport Government personnel a minimum of four (4) round trips per day. The minimum full time crew for the crew boat shall be one operator per shift. . Refer to the latest version of the Safety and Health Requirements Manual, EM 385-1-1, paragraph 19.c., for additional crew and equipment requirements.

13. DREDGING PRISM AND OVERDEPTH DREDGING.

Prior to dredging, the QAR will provide a horizontal layout for each dredging assignment upon receipt of the before dredging hydro survey performed by the Contractor. The layout will show the location and limits of the required dredging assignment identified by GPS coordinates. The required dredge prism is defined by these limits and the required depths as provided by the QAR. The theoretical side slopes of the prism will be 1V on 3H (1-foot vertical to 3-feet horizontal). However, if site conditions warrant, a flatter or steeper slope will be allowed to define the dredging prism. The Contractor shall remove all material from within the dredging prism and the actual quantities

removed will be measured for payment using the before and after dredging hydro surveys performed by the Contractor. Two feet over-dredging will be allowed, and the quantities within this two-foot overdepth tolerance will be measured and paid for at the contract unit price per cubic yard. Dredging in excess of this two-foot over depth tolerance will not be paid for. A typical dredge section is included at the end of this Section.

If shoaling occurs in any reach previously accepted, re-dredging at the contract price shall be performed by the Contractor, if so directed by the Contracting Officer.



TYPICAL DREDGING SECTION

Invitation No. DACW66-00-R-0005

DIVISION 3 THRU DIVISION 16

(NOT USED)