US Army Corps
of Engineers
Savanna District

# Savannah/Brunswick Harbor Georgia

## Solicitation Number
## W912HN-04-B-0008
## Maintenance Dredging, Entrance Channel
**August 2004**

**U.S. ARMY ENGINEER DISTRICT, SAVANNAH**
**CORPS OF ENGINEERS**
**100 WEST OGLETHORPE AVENUE**
**SAVANNAH, GEORGIA 31401-3640**

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Attachment 1 to Section 00800

Specifications - Divisions 1 and 2

| SOLICITATION, OFFER, AND AWARD *(Construction, Alteration, or Repair)* | 1. SOLICITATION NO. W912HN-04-B-0008-0002 | 2. TYPE OF SOLICITATION [X] SEALED BID (IFB) [ ] NEGOTIATED *(RFP)* | 3. DATE ISSUED 26-Aug-2004 | PAGE OF PAGES 1 OF 155 |
|---|---|---|---|---|

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

| 4. CONTRACT NO. | 5. REQUISITION/PURCHASE REQUEST NO. W33SJG-4111-4128 | 6. PROJECT NO. |
|---|---|---|

| 7. ISSUED BY CODE CAJ | 8. ADDRESS OFFER TO *(If Other Than Item 7)* CODE |
|---|---|
| US ARMY ENGINEER DISTRICT SAVANNAH<br>ATTN: CT-P/CHERYL JACKSON<br>100 WEST OGLETHORPE AVE<br>SAVANNAH GA 31401-3640 | **See Item 7** |
| TEL:(912)652-5115 FAX: (912)652-6059 | TEL: FAX: |

| 9. FOR INFORMATION CALL: | A. NAME CHERYL A JACKSON | B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)* 912/652-5115 |
|---|---|---|

**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):*

CONTRACT SPECIALIST: Cheryl Jackson, 912-652-5115
email. cheryl.a.jackson@sas02.usace.army.mil

MAINTENANCE DREDGING ENTRANCE CHANNELS, SAVANNAH AND BRUNSWICK HARBORS, CHATHAM AND GLYNN COUNTY, GEORGIA. This project consists of dredging approximately 2 million cubic yards of maintenance material from the entrance channels of Savannah (Station 0+000 to -60+000) and Brunswick (Station 33+000 to -56+500) Harbors by hopper dredge. Dredged material will be placed in the designated offshore disposal areas. Work is to be performed concurrently with normal shipping traffic.

See Section 00800: COMMENCEMENT PROSECUTION, AND COMPLETION OF WORK.

NOTE: This is a competitive unrestricted solicitation.

11. The Contractor shall begin performance within 5 calendar days and complete it within 75 calendar days after receiving [ ] award, [X] notice to proceed. This performance period is [X] mandatory, [ ] negotiable. *(See* FAR 52-211-10 *.)*

| 12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? *(If "YES," indicate within how many calendar days after award in Item 12B.)* [X] YES [ ] NO | 12B. CALENDAR DAYS 10 |
|---|---|

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by 02:00 PM *(hour)* local time 30 Sep 2004 *(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 [X] is, [ ] is not required.

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

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

## SOLICITATION, OFFER, AND AWARD (Continued)

*(Construction, Alteration, or Repair)*

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

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

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

| AMOUNTS | SEE SCHEDULE OF PRICES |
|---|---|

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 |
|---|---|---|

**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 ☐ 10 U.S.C. 2304(c) ☐ 41 U.S.C. 253(c) |
|---|---|---|
| 26. ADMINISTERED BY CODE | | 27. PAYMENT WILL BE MADE BY: CODE |

*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 or 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 consummates 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)*<br>TEL: EMAIL: |
|---|---|---|
| 30B. SIGNATURE | 30C. DATE | 31B. UNITED STATES OF AMERICA<br>BY / 31C. AWARD DATE |

Section 00010 - Solicitation Contract Form

MAINTENANCE DREDGING

**NOTICE TO OFFERORS**

HAND-CARRIED OR MAILED PROPOSALS:

All proposals must be clearly identified with the contractor's name and address. To ensure timely and proper handling, the lower left corner of the outermost wrapper should indicate the Request For Proposal No., Due Date of Proposal, Time by which Proposals are Due, and Title of Project.

The Government will not be responsible for proposals delivered to any location or to anyone other than those designated to receive proposals on its behalf as indicated below.

Proposals delivered by commercial carrier and those sent by U.S. Mail, including U.S. Express Mail, must be addressed as indicated below. Proposals shall not be addressed to any specific person.

U.S. Army Engineer District, Savannah
ATTN: CESAS-CT-P
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640

Mailroom personnel on the first floor of 100 West Oglethorpe Avenue must receive proposals sent by U.S. Mail or delivered by commercial carrier by the time specified in Block 13 of the SF1442 for receipt of proposals.

Offerors are cautioned that proposals sent via United States Postal Service Express Mail are first delivered to the Savannah District Post Office Box instead of 100 West Oglethorpe Avenue, "the office designated for receipt of proposals" therefore, allow sufficient mailing time.

Hand-carried proposals also must be delivered to mailroom personnel on the first floor of 100 West Oglethorpe Avenue by the time specified in Block 13 of SF1442 for receipt of proposals.

Offerors are cautioned that there is no parking in or around the building, therefore, when hand delivering proposals sufficient time should be allowed for transporting of proposal packages from your vehicle to mailroom personnel.

FACSIMILE MODIFICATIONS OF PROPOSALS ARE NOT AUTHORIZED.

MAINTENANCE DREDGING
ENTRANCE CHANNELS BRUNSWICK AND SAVANNAH HARBORS, GEORGIA

**FOR BID ITEMS 0001-0015 SEE SECTION 02100**
**FOR BID ITEM 0016 SEE SECTION 02112**

ALL BIDDERS ARE ADVISED MATERIALLY UNBALANCED BIDS MAY BE REJECTED AS NONRESPONSIVE. SEE SECTION 00100 – 52.214-0019

ESTIMATED LINE ITEMS SHALL NOT EXCEED THE ESTIMATED AMOUNT WITHOUT PRIOR APPROVAL OF THE CONTRACTING OFFICER.

PLEASE NOTE: ATTACHMENT 1 TO SECTION 00800, REQUIRES DREDGE PLANT DATA SHEETS AND EQUIPMENT SCHEDULE, TO BE ATTACHED TO BID FORM.

TOTAL BASE BID (Items 0001 through 0016AB)----------$_____

| ITEM NO | SUPPLIES/SERVICES | QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0001 | Mobilization and Demobilization | 1 | Lump Sum | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0002 | Maintenance Dredging, Tybee Cut Range, Station 0+000 to -10+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0002AA | | 12,300 | Cubic Yard | $_____ | $_____ |
| | First 12,300 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0002AB | | 5,900 | Cubic Yard | $_____ | $_____ |
| | All Over 12,300 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0003 | |
| | Maintenance Dredging, Jones Island Range, Station 10+000B to -20+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0003AA | | 65,700 | Cubic Yard | $_____ | $_____ |
| | First 65,700 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0003AB | | 55,300 | Cubic Yard | $_____ | $_____ |
| | All over 65,700 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0004 | |
| | Maintenance Dredging, Bloody Point Range, Station -20+000B to -30+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0004AA | | 14,800 | Cubic Yard | $_____ | $_____ |
| | First 14,800 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0004AB | | 10,700 | Cubic Yard | $_____ | $_____ |
| | All over 14,800 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0005 | Maintenance Dredging, Bloody Point Range, Station -30+000B to -40+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0005AA | First 136,300 Cubic Yards | 136,300 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0005AB | All over 136,300 Cubic Yards | 240,700 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0006 | Contingency Dredging, Tybee Range Station -40+000B to -60+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0006AA | First 2 Days | 2 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0006AB | All over two days | 1 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0007 | Contingency Dredging, Brunswick Point Cut Range, Station 25+000 to 21+835 |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0007AA | First 2 days | 2 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0007AB | All over two days | 1 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0008 | Maintenance Dredging, Cedar Hammock Range, Station 21+835 to 15+000 |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0008AA | First 83,900 Cubic Yards | 83,900 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0008AB | All over 83,900 Cubic Yards | 33,900 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0009 | Maintenance Dredging, St. Simons Range, Station 6+250B to -8+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0009AA | First 10,400 Cubic Yards | 10,400 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0009AB | All over 10,400 Cubic Yards | 6,800 | Cubic Yard | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0010 | Maintenance Dredging, St. Simons Range, Station -8+000B to -21+500B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0010AA | | 20,600 | Cubic Yard | $_____ | $_____ |
| | First 20,600 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0010AB | | 74,200 | Cubic Yard | $_____ | $_____ |
| | All over 20,600 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0011 | |
| | Maintenance Dredging, St. Simons Range, Station -21+500B to -31+000B |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0011AA | | 76,500 | Cubic Yard | $_____ | $_____ |
| | First 76,500 Cubic Yards | | | | |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0011AB | | 50,200 | Cubic Yard | $_____ | $_____ |
| | All over 76,500 Cubic Yards | | | | |

ITEM NO SUPPLIES/SERVICES
0012
DELETED

ITEM NO SUPPLIES/SERVICES
0012AA DELETED

ITEM NO SUPPLIES/SERVICES
0012AB DELETED

ITEM NO SUPPLIES/SERVICES
0013
Contingency Dredging, St. Simons Range, Station -31+000B to -53+000B

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0013AA | First 2 Days | 2 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0013AB | All over 2 days | 1 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0014 | Buoy Removal |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0014AA | First Buoy | 1 | Each | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0014AB | All over one buoy | 1 | Each | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0015 | Stand by Time |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0015AA | First Day | 1 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0015AB | All over one day | 2 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES |
|---|---|
| 0016 | Trawling Requirements |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0016AA | First Day | 1 | Days | $_____ | $_____ |

| ITEM NO | SUPPLIES/SERVICES | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| 0016AB | All over one day | 1 | Days | $_____ | $_____ |

Section 00100 - Bidding Schedule/Instructions to Bidders

CLAUSES INCORPORATED BY FULL TEXT

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (OCT 2003)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS number or “DUNS+4” that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at http://www.dnb.com; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(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 (JAN 2004)

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.dla.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) 697-2179, Facsimile (215) 697-1462.

(End of provision)

52.211-5000 EVALUATION OF SUBDIVIDED ITEMS (MAR 1995)--EFARS
Item Nos. 0002 through 0016 are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.
(End of clause)

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

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

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

(End of provision)

52.214-5 SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

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

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

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

(End of provision)

52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

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

(End of provision)

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

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

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

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

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

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

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

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

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

(End of provision)

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

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

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

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

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

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

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

(End of provision)

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

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

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

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

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

(End of provison)

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

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

(End of provision)

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

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

(End of provision)

52.214-5000 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)

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)

52.219-4001 SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS
(JAN 2004 CESAS-CT)

(a) In accordance with FAR Clause 52.219-9, large businesses must submit a subcontracting plan. A sample subcontracting plan is located in Section 00800.

(b) The subcontracting targets (expressed in terms of percentages of total planned subcontracting dollars) of the Savannah District are as follows:

| | | |
|---|---|---|
| Small Business | - | 57.2% |
| Small Disadvantaged Business | - | 10.0% |
| HUBZone Small Business | | 3.0% |
| Women-Owned Business | - | 10.0% |
| Veteran-Owned Small Business | | 0%* |
| Service-Disabled Veteran-Owned Small Business | - | 3.0%** |

If you cannot reach the above-stated targets, you must provide written justification with your subcontracting plan detailing the reasons you cannot meet the requirements.

*(c) While Savannah District does not have a specific target for subcontracting with Veteran-Owned small businesses, this must be addressed in any subcontracting plan.

**(d) Service-disabled Veteran-owned Small Business (SD/VOSB) is a composite of Veteran-Owned Small Business. The SD/VOSB target must be included in the Veteran-Owned small business target.

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

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

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

| Goals for minority participation for each trade | Goals for female participation for each trade |
|---|---|
| 29.8% Brunswick & Jasper<br>30.6% Chatham County | 6.9% |

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

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

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

(1) Name, address, and telephone number of the subcontractor;

(2) Employer's identification number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Jasper County, South Carolina, Chatham County, Georgia and Glynn County, Georgia.

(End of provision)

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

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

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

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

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

(d) Alternate offers.

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

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

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

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

(ii) May be accepted if revised during negotiations.

(End of provision)

52.233-2 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

U.S. Army Engineer District, Savannah
Attn: CESAS-CT-P
100 West Oglethorpe Avenue
Savannah, GA 31401-3640

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

(End of provision)

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

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

(b) Site visits may be arranged during normal duty hours by contacting:
Name: Roger Lafond
Address: Attn: OP-NN
100 West Oglethorpe Avenue
Savannah, GA 31401
Telephone: 912-652-5326

(End of provision)

52.236-4011 Disclosure of Magnitude of Construction (FAR 36.204 and DFARS 236.204)

The estimated price range for this project is between $1,000,000 and $5,000,000.

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 contrary to subparagraphs (a)(1) through (a)(3) of this provision; or

(2) (i) Has been authorized, in writing, to act as 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) of this provison _____ (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) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, 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)

52.204-5 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 a women-owned business concern.

(End of provision)

52.204-4002 CORPORATE CERTIFICATE (MAR 1994 CESAS-CT) (Ref. FAR 4.102(c))

The offeror shall execute and affix seal on attached Corporate Certificate if the company is incorporated. Company name on the seal should always be the same as company name on Page A-1 of the solicitation. If a proposal is signed by an officer of the company, the certificate shall be certified by another officer of the company. If the proposal is signed by someone other than an officer of the company, the proposal must be accompanied by: (1) a Corporate Resolution that individual signing the contract has authority to bind the company; or (2) a Corporate Resolution stating that an officer of the company may appoint individuals to sign

proposals and bind the company.

NOTE: Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the contract and the certificate.

CERTIFICATE

I, _____ , certify that I am

_____of the corporation named Contractor herein, that

_____ signed this contract on behalf of the Contractor, was

then _____ of said corporation; that said contract was duly signed for and in of said corporation by

authority of its governing body, and is within the scope of its corporate powers.

_____ (CORPORATE SEAL)
(Signature)

(End of provision)

52.204-4003 TAXPAYER IDENTIFICATION

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.

(a) 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.

(b) 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 _____

(c) Common parent.

___ Offeror is not owned or controlled by a common parent

___ Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

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

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

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

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

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

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (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 (APR 2002) - ALTERNATE I (APR 2002)

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

(2) The small business size standard is $17.0 Million.

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

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

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

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

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

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

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

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

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

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

____ Black American.

____ Hispanic American.

____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

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

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

____ Individual/concern, other than one of the preceding.

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

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

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

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

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

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

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

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

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

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

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

(d) Notice.

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

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

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

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

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

(End of provision)

52.219-2 EQUAL LOW BIDS. (OCT 1995)

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

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

_____

_____

(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority

consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

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

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

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

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

(ii) Otherwise successful offers from small business concerns;

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

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

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

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

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

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

___ Offeror elects to waive the evaluation preference.

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

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

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

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

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

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

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

(End of clause)

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

(a) Definition.

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

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

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

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

| No. of Employees | Avg. Annual Gross Revenues |
|---|---|
| ____ 50 or fewer | ____ $1 million or less |
| ____ 51 - 100 | ____ $1,000,001 - $2 million |
| ____ 101 - 250 | ____ $2,000,001 - $3.5 million |
| ____ 251 - 500 | ____ $3,500,001 - $5 million |
| ____ 501 - 750 | ____ $5,000,001 - $10 million |
| ____ 751 - 1,000 | ____ $10,000,001 - $17 million |
| ____ Over 1,000 | ____ Over $17 million |

(End of provision)

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

The offeror represents that --

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

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

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

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

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

(End of provision)

52.223-4 RECOVERED MATERIAL CERTIFICATION (OCT 1997)

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

(End of provision)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(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 in 40 CFR 372.65;

( ) (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 the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

( ) (v) The facility is not located within the United States or its outlying areas.

(End of clause)

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

(a) "Definitions."

As used in this provision --

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

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

(3) "Significant interest" means --

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

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

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

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

(v) Holding 50 percent or more of the indebtness 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 disclosure 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)

Section 00700 - Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 DEFINITIONS (MAY 2001) --ALTERNATE I (MAR 2001)

(a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) Commercial component means any component that is a commercial item.

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

(d) 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.

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

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

(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.

(End of clause)

52.203-3 GRATUITIES (APR 1984)

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

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

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

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

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

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

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

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

(End of clause)

52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

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

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

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

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

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

(End of clause)

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

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

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

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

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

(a) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be

made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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 2003)

(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, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

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

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

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

(i) Agency and legislative liaison by own employees.

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

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

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

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

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

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

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

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

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

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

(ii) Professional and technical services.

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

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

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

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

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

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

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

(c) Disclosure.

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

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

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

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

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

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

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

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

(e) Penalties.

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

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

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

(End of clause)

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

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

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

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

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

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

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

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

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

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

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

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

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

Registered in the CCR database means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record “Active”.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at http://www.dnb.com; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, 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 review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

(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 debars 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)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(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.

52.211-5001 VARIATIONS IN ESTIMATED QUANTITIES, SUBDIVIDED ITEMS
(MAR 1995)--EFARS
This variation in estimated quantities clause is applicable only to Items Nos. 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, 0011, 0013, 0014, 0015, and 0016.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for Items Nos. 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, 0011, 0013, 0014, 0015, and 0016 is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Items Nos. 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, 0011, 0013, 0014, 0015, and 0016 exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Items Nos. 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, 0011, 0013, 0014, 0015 and 0016 exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.
(End of clause)

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

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

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

(1) The proposal for the modification;

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

(3) Pricing of the modification; or

(4) Performance of the modification.

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

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

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

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

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

(End of clause)

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

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

(1) Based on adequate price competition;

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

(3) Set by law or regulation.

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

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

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

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

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

(1) the actual subcontract; or

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

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

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

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

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

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

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

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

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

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

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

(ii) An offset shall not be allowed if:

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

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

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

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

(End of clause)

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

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

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

(2) be limited to such modifications.

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

(1) Based on adequate price competition;

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

(3) Set by law or regulation.

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

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

(End of clause)

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

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

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

Definitions. As used in this contract--

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

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

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

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

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

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

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

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

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

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

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

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

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

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

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

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)

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

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

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

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

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

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

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, 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 for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

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

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

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

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

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

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

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

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

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

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

(10) Assurances that the offeror will--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

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

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

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

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

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

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--
(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

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

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

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

(j) The Contractor shall submit the following reports:

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

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

predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

52.219-16 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 (JUN 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

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

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) 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;

(iv) 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

(v) The Attorney General of the United States has certified that the work-release laws or **regulations** of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

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

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

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

(End of clause)

52.222-6 DAVIS-BACON ACT (FEB 1995)

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

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

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

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

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S.

Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

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

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

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

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

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

(End of clause)

52.222-26 EQUAL OPPORTUNITY (APR 2002)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in

every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

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

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

(End of clause)

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

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

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

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

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

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

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

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

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

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

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

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

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

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

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

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

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

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

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

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

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

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their

cooperation in assisting the Contractor in meeting its contract obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a

contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

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

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

Executive and top management means any employee--

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

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

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

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

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

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

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

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

Special disabled veteran means--

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

(i) Rated at 30 percent or more; or

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

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

Veteran of the Vietnam era means a person who--

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

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

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

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

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

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.
(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

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

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

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

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

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

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

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

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

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

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

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

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of 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)

52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

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

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to deter- mine 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) though (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 (AUG 2003)

(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 in 40 CFR 372.65;

(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 the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (JUN 2003)

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

Component means an article, material, or supply incorporated directly into a construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic construction material means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: **None**

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

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

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

| Construction material description | Unit of measure | Quantity | Price (dollars) \1\ |
|---|---|---|---|
| Item 1 | | | |
| Foreign construction material.... | ..... | ..... | ..... |
| Domestic construction material... | ..... | ..... | ..... |
| Item 2 | | | |
| Foreign construction material.... | ..... | ..... | ..... |
| Domestic construction material... | ..... | ..... | ..... |

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).
List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
Include other applicable supporting information.

(End of clause)

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JAN 2004)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at TerList1.html. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at http://www.treas.gov/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(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.)

(End of clause)

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.

(b) 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.

(End of clause)

52.228-1 BID GUARANTEE (SEP 1996)

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

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

(c) The amount of the bid guarantee shall be 20% percent of the bid price or $3 Million, 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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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)

52.228-4002 REQUIRED INSURANCE (FEB 1987 SAS) (Ref. FAR 28.307)

(a) The Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:

Comprehensive and Employer's Liability Insurance in the amount required by the State law in which the work is to be performed under this contract.

Comprehensive General Liability Insurance in an amount not less than $500,000 per accident.

Automobile Liability Insurance: $200,000 per person and $500,000 per accident for bodily injury liability and $20,000 property damage liability.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation, or any material change in the policies adversely affecting the interests of the Government in such insurance, shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than 30 days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this subparagraph (c), in all subcontracts hereunder.

(End of clause)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

(a) As used in this clause--

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or

excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

_____

(Name)

_____

(Title)

_____

(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in

paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against
the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

52.232-17 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.

(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.

(End of clause)

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.

(End of clause)

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2003)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7

days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

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

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to use:

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph
(e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to

as a “second-tier subcontractor”) a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts DisputesAct of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(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) 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.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

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

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

52.233-1 DISPUTES. (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when

submitting any claim -

(A) Exceeding $100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative disput 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.

(End of clause)

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

52.236-13 ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will

(1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) avoid interruptions of Government operations and delays in project completion dates; and

(3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(c) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) Before commencing the work, the Contractor shall-

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(End of clause)

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.

(End of clause)

52.236-16 QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

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.

(End of clause)

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.

(End of clause)

52.239-4001 Year 2000 Compliance

The contractor shall ensure products provided under this contract, to include hardware, software, firmware, and middleware, whether acting alone or combined as a system, are Year 2000 compliant as defined as follows: Year 2000 compliant means with respect to information technology, that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information, used in combination with the information technology being acquired, properly exchanges date/time data with it.

52.239-4005 Year 2000 Compliance - Construction Contracts

a. In accordance with FAR 39.106, the contractor shall ensure that with respect to any design, construction, goods, or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. Specifically:
The contractor shall:

(1) Perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order which may be affected by the Y2K compliance requirement.

(2) Indicate whether each component is currently Year 2000 compliant or requires an upgrade for compliance prior to government acceptance.

(End of Clause)

52.239-4006 SECURITY CONTRACT LANGUAGE FOR ALL CORPS OF ENGINEERS' UNCLASSIFIED CONTRACTS (PIL 2003-06, 19 FEB 03)

All Contractor employees (U.S. citizens and Non- U.S. citizens) working under this contract (to include grants, cooperative agreements and task orders) who require access to Automated Information Systems (AIS), (stand alone computers, network computers/systems, e-mail) shall, at a minimum, be designated into an ADP-III position (non-sensitive) in accordance with DoD 5220-22-R, Industrial Security Regulation. The investigative requirements for an ADP-III position are a favorable National Agency Check (NAC), SF-85P, Public Trust Position. The contractor shall have each applicable employee complete a SF-85P and submit to the USACE, Savannah District Security Officer, ATTN: CESAS-SL, 100 West Oglethorpe Avenue, Savannah, GA 31401 within three (3) working days after award of any contract or task order, and shall be submitted prior to the individual being permitted access to an AIS. Contractors who have a commercial or government entity (CAGE) Code and Facility Security Clearance through the Defense Security Service shall process the NACs and forward visit requests/results of NAC to the Savannah District Security Officer (address above). For those contractors who do not have a CAGE Code or Facility Security Clearance, the Savannah District Security Office will process the investigation in coordination with the Contractor and contract employees.

In accordance with Engineering Regulation, ER 380-1-18, Section 4, foreign nationals who work on Corps of Engineers' contracts or task orders shall be approved by the HQUSACE Foreign Disclosure Officer or higher before beginning work on the contract/task order. This regulation includes subcontractor employees. (NOTE: exceptions to the above requirement include foreign nationals who perform janitorial and/or ground maintenance services.) The contractor shall submit to the Division/District Contract Office, the names of all foreign nationals proposed for performance under this contract/task order, along with documentation to verify that he/she was legally admitted into

the United States and has authority to work and/or go to school in the US. Such documentation may include a US passport, Certificate of US citizenship (INS Form N-560 or N-561), Certificate of Naturalization (INS Form N-550 or N-570), foreign passport with I-551 stamp or attached INS Form I-94 indicating employment authorization, Alien Registration Receipt Card with photograph (INS Form I-151 or I-551), Temporary Resident Card (INS Form I-688), Employment Authorization Card (INS Form I-688A), Reentry Permit (INS Form I-327), Refugee Travel Document (INS Form I-571), Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B).

Classified contracts require the issuance of a DD Form 254 (Department of Defense Contract Security Classification Specification).

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.

(End of clause)

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.

(End of clause)

52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101–510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

(End of clause)

52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering-- Construction clause of contract . . . . . , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996) - ALTERNATE I (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 Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(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)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(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.

(2) 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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) "Arising out of a contract with the DoD" means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION ALTERNATE A (NOV 2003)

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

“Central Contractor Registration (CCR) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Commercial and Government Entity (CAGE) code” means--

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

“Registered in the CCR database” means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields and has marked the records “Active.”

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at http://www.dnb.com; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, 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 review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that

Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(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.

(End of clause)

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties

Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institutions*, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employees has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2..1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 2003)

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

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) End product means supplies delivered under a line item of this contract.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply--

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool--

(i) Is not more than 10 percent of the total price of the end product; and (ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;

(4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(5) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/ tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (APR 2003)

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

(1) Foreign person means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) United States person is defined in 50 U.S.C. App. 2415(2) and means--

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) Certification. If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES, AND HAWAIIAN SMALL BUSINESS CONCERNS (OCT 2003)

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

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any ``Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a 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.

Native Hawaiian small business concern means an entity that is--

(1) A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to--

(1) For matters relating to Indian organizations or Indian-owned economic enterprises: U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS-2626-MIB, Washington, DC 20240-4000. The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns: Department of Hawaiian Home Lands, PO Box 1879, Honolulu, HI 96805. The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made--

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) 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 estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000 for which further subcontracting opportunities may exist.

(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.

(End of clause)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

| Title | File | Drawing No. |
|---|---|---|
| Index of drawings | z9ag01g.dgn | G-01 |
| Savannah Harbor Location map | z9ag02g.dgn | G-02 |
| Brunswick Harbor Location map | v9dg03g.dgn | G-03 |
| New Channel Range | z9av801h.dgn | H-01 |
| Tybee Knoll | z9av802h.dgn | H-02 |
| Tybee Knoll | z9av803h.dgn | H-03 |
| Tybee Knoll | z9av804h.dgn | H-04 |
| Tybee Knoll | z9av805h.dgn | H-05 |
| Tybee Roads | z9av806h.dgn | H-06 |
| Tybee Roads | z9av807h.dgn | H-07 |
| Tybee Roads | z9av808h.dgn | H-08 |
| Tybee Roads | z9av809h.dgn | H-09 |
| Tybee Roads | z9av810h.dgn | H-10 |
| Tybee Roads | z9av811h.dgn | H-11 |
| Brunswick Point Cut and Cedar Hammock Ranges | v9dv812h.dgn | H-12 |
| Cedar Hammock and Jekyll Island Range | v9dv813h.dgn | H-13 |
| Jekyll Island and Plantation Creek Range | v9dv813ah.dgn | H-13A |
| Plantation Creek Range | v9dv813bh.dgn | H-13B |
| St. Simons Range | v9dv814h.dgn | H-14 |
| St. Simons Range | v9dv815h.dgn | H-15 |
| St. Simons Range | v9dv816h.dgn | H-16 |
| St. Simons Range | v9dv817h.dgn | H-17 |
| St. Simons Range | v9dv818h.dgn | H-18 |
| St. Simons Range | v9dv819h.dgn | H-19 |
| St. Simons Range | v9dv820h.dgn | H-20 |
| Offshore Disposal Area - Savannah Harbor | z9av801d.dgn | D-01 |
| Offshore Disposal Area - Brunswick Harbor | v9dv801d.dgn | D-02 |
| Typical Dredging Sections - Savannah Harbor | z9aw301x.dgn | X-01 |
| Typical Dredging Sections - Brunswick Harbor | v9dw301x.dgn | X-02A |
| Typical Dredging Sections - Brunswick | v9dw302x.b.dgn | X-02B |

(End of clause)

252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS. (DEC 1991)

(a) The Contractor shall --

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may --

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et. seq.).

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

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

(1) 60 percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining 40 percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of --

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

---
(Official's Name)
---
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(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 Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., 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 shall 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) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(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)

Section 00800 - Special Contract Requirements

CLAUSES INCORPORATED BY FULL TEXT

52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within 5 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 75 days. The time stated for completion shall include final cleanup of the premises.

(End of clause)

52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of $916.00 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.219-4002 REPORTING REQUIREMENTS--SUBCONTRACTING PLAN (CESAD-CT JUL 1993)

(a) Retainage will be withheld from progress payments in an amount sufficient to protect the Government's ability to assess Liquidated Damages in accordance with FAR clause 52.219-0016 for failure to submit timely SF 294 and SF 295 Reports. The amount of retainage will be determined in accordance with the following formula:
(b) Total dollar amount proposed for subcontracting to small business multiplied by percentage of actual progress on the contract, up to a maximum of 10% of the given progress payment, shall be withheld from the next progress payment due after a contractor fails to submit a required report. If one or more reports have been submitted before such failure, formula for determining the amount of retainage will be adjusted by deducting any amounts reported as subcontracted to small business from the total dollar amount proposed to be subcontracted and the difference multiplied by the percent of actual progress, up to a maximum of 10% of the given progress payment.
(End of clause)

52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (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.”

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall--

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to the U. S. Army Corps of Engineers, Savannah District, P.O. Box 889, Savannah, GA 31402-0889.

(End of clause)

52.223-4002 U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385-1-1

This paragraph applies to contracts and purchase orders that require the contractor to comply with EM 385-1-1 (e.g., contracts that include the Accident Prevention clause at FAR 52.236-13 and/or other safety provisions). EM 385-1-1 and its changes are available at http://www.hq.usace.army.mil. (At the HQ homepage, select Safety and Occupational Health.) The Contractor shall be responsible for complying with the current edition and all changes posted on the web through the date that is 10 calendar days prior to the date offers are due. If the solicitation is amended to extend the time set for receipt of offers, the 10 calendar days rule stated above shall be applied against the amended date. (For example, if offers are due on 10 April, all changes posted on or before 31 March shall apply to the contract. If the time for receipt of offers is extended from 10 April to 20 April, all changes posted on or before 10 April shall apply to the contract.)

52.223-4005 DREDGING SAFETY MANAGEMENT PROGRAM

The Contractor shall comply with the provisions of EM385-1-1. If the Contractor is a currently accepted participant in the Dredging Contractors of America (DCA)/United States Army Corps of Engineers (USACE) Dredging Safety Management Program (DSMP), as determined by the DCA/USACE Joint Committee, and holds a current valid Certificate of Compliance for both the Contractor Program and the Dredge(s) to be used to perform the work required under this contract, the Contractor may, in lieu of the submission of an Accident Prevention Plan(APP),

(1) make available for review, upon request, the Contractor's current Safety Management System (SMS) documentation,
(2) submit to the Contracting Officer the current valid Company Certificate of Compliance for its SMS,
(3) submit the current dredge(s) Certificate of Compliance based on third party audit, and
(4) submit for review and acceptance, site-specific addenda to the SMS as specified in the solicitation.

52.228-4002 REQUIRED INSURANCE (FEB 1987 SAS) (Ref. FAR 28.307)

(a) The Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:

Comprehensive and Employer's Liability Insurance in the amount

required by the State law in which the work is to be performed under this contract.
Comprehensive General Liability Insurance in an amount not less than $500,000 per accident.
Automobile Liability Insurance: $200,000 per person and $500,000 per accident for bodily injury liability and $20,000 property damage liability.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation, or any material change in the policies adversely affecting the interests of the Government in such insurance, shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than 30 days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this subparagraph (c), in all subcontracts hereunder.

(End of clause)

52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
MAR 1995)--EFARS

(a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region III. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

52.232-4007 ACCOUNTING AND APPROPRIATION DATA (APR 1989 CESAS-RM)

96X31230000 082447 25206GGD44002080 NA 96096 $1,000.00
96X31230000 082447 25208430BC075085 NA 96096 $1,000.00

(End of clause)

52.232-4008 DESIGNATED BILLING OFFICE (APR 1989 CESAS-RM)

Invoices will be mailed to:

U.S. Army Corps of Engineers
Attn: CESAS-OP-NN
P.O. Box 889
Savannah, GA 31402-0889

(End of Clause)

52.232-4009 DESIGNATED PAYMENT OFFICE (AUG 1998 CESAS-RM-F)

Payment will be made by:
U.S. Army Corps of Engineers Finance Center
ATTN: CEFC-AO-P
5720 Integrity Drive
Millington, TN 38054-5005
(End of clause)

52.232-5000 PAYMENT FOR MATERIALS DELIVERED OFF-SITE (MAR 1995)—EFARS

(a) Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.
(b) Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. In addition to petroleum products, payment for materials delivered off-site is limited to the following items: None

(End of clause)

52.232-5001 CONTINUING CONTRACTS (MAR 1995)--EFARS
(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations, and from future contribution to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.
(b) The sum of $2,000.00 has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which

additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.

(c) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (f) and (i) below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore.

(d) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(e) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(f) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(g) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

(h) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(i) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

(j) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

(End of clause)

52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least 40% percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

52.236-4 PHYSICAL DATA (APR 1984)

**FOR: SAVANNAH AREA**

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) Physical Conditions. The physical conditions indicated on the drawings and in the specifications are the result of the site investigations by surveys and soundings. Contractors are expected to visit the work site and determine for themselves the characteristics of the material to be dredged.

(b) Weather Conditions. The project area has long, warm summers and short, mild winters. The coastal portion is slightly warmer in winter and receives more rain in summer and fall than interior areas, but rainfall is usually plentiful throughout the basin.

(1) The annual normal rainfall (1950-90) at the Savannah, Georgia, Municipal Airport, is 5 miles west of the site, is 49.70 inches (Average Annual 1961-90: 48.30 inches):

(A) Record (40 years)
Maximum Monthly - 20.1 inches July 1964

(B) Record (40 years)
Minimum Monthly -- 0.02 inch October 1963

(C) Record (40 years)
Maximum 24 Hour - 7.0 inches August 1971

Normally about 25 inches of rain falls during the thunderstorm season of 15 June through 15 September. The remainder of the annual rainfall, produced principally by squall-line and frontal showers, is spread over 9 months with a minor peak in March. Considerable periods of fair, mild weather are experienced in October, November, April, and to a less extent, in May. Snow is a rarity and even a trace does not occur on an average of once a year. The greatest recorded fall was 3.6 inches in February 1968. Severe tropical storms affect this area about once in 10 years. Rainfall from these storms constitutes our heaviest sustained precipitation. Instances of this are the 22.79 inches in August 1898, and 22.88 inches in September 1924, most of which was from tropical storms (1961-90) is 20.10 inches in July 1964.

(2) The average normal monthly temperature at Savannah, Georgia, (1950-90) is 66.8 degrees F. with seasonal averages as follows:

| Season | Degrees Fahrenheit |
|---|---|
| Winter | 51 |
| Spring | 66 |
| Summer | 81 |
| Fall | 68 |

Extreme temperatures are as follows (normals based on 1951-80):

(A) Normal Maximums ------ 105 degrees F. July 1986
(Normal maximum 90.8)

84 degrees F. January 1957

(Normal maximum 60.3)

(B) Normal Daily Maximum-76.1 degrees F.

(C) Daily Minimum ---------- 3 degrees F. January 1985
(Normal minimum 37.9)

61 degrees F. July 1972
(Normal minimum 71.5)

(D) Average Normal Monthly Minimum ------ 55.1 degrees F.

Average Normal Daily Maximum ---------- 76.7 degrees F.

(E) Record (40 years) Maximum --- 105 degrees F. July 1986

(F) Record (40 years) Minimum -- 3 degrees F. January 1985

(3) The annual average wind speed, for the past 40 years of record, is 7.9 mph, southwest, with the highest monthly mean occurring in February (NE) and March (WNW) at 9.2 mph, and the lowest monthly mean in August at 6.6 mph, southwest. Extreme winds (fastest 1 minute values) vary from 46 mph west in March 1981 to 68 mph southwest in May 1984. Weather Bureau records for Savannah, Georgia, give the following data:

| (1948-90) | Clear | Partly Cloudy | Cloudy | Thunder-storms | Dense Fog* |
|---|---|---|---|---|---|
| Years of Record | 42 | 42 | 42 | 42 | 42 |
| Number Days per Year 103 | 116 | 124 | 125 | 52 | 44 |

*NOTE: Heavy fog, visibility ¼ miles or less

| Temp. Degrees F. | Days per year | Years of Record |
|---|---|---|
| 90 degrees and above | 66 | 23 |
| 32 degrees and below | 32 | 23 |
| Percent of Possible Sunshine | 62 | 37 |

(c) Transportation Facilities. Railway facilities are available at Savannah, Georgia. Areas to be dredged are accessible by barge through the Atlantic Intracoastal Waterway and the Savannah Harbor. Docking, fuel facilities and marine supplies are available at the Port of Savannah.

(d) Location. The proposed dredging sites located at the mouth of the Savannah River along 11 miles of the outer Savannah Harbor Entrance Channel, Chatham County, Georgia and Jasper County, South Carolina), southeast of Fort Pulaski, Cockspur Island (Tybee Road). The center of the project area lies at approximately 32 degrees 01’ north latitude and 80 degrees 48’ west longitude.

(e) Local Tide Conditions. The area to be dredged is subject to severe wave action and exposure to severe storm. The mean tidal range is 6.9 feet and the spring range is 8.1 feet. Current velocities average 1.6 to 2.6 knots. The working season lasts throughout the year.

(f) Channel Traffic. The traffic that may be expected to use the channel during the progress of the dredging consists of ocean-going vessels, towboats, barges, and various small craft. According to Waterborne Commerce Statistics, in 1989 about 7,757 vessels trips were made in and out of Savannah Harbor. Based on these statistics, an average of over four deep draft vessels per day may enter or leave the harbor.

(g) Obstruction of Channel. The Government will not undertake to keep the channel free from vessels or other obstructions, except to the extent of such regulations, if any, as may be prescribed by the Secretary of the Army, in accordance with the provisions of Section 7 of the River and Harbor Act approved 8 August 1917. The Contractor will be required to conduct the work in such a manner as to obstruct navigation as little as possible, and in case the Contractor's plant so obstructs the channel as to make difficult or endanger the passage of vessels, said plant shall be promptly moved on the approach of any vessel to such an extent as may be necessary to afford a practicable passage. Upon completion of the work the Contractor shall promptly remove his plant, including ranges, buoys, piles and other markers placed by him under the contract in navigable waters or on the shore.

(h) Subsurface Investigations. No subsurface investigations have been performed in Acceptance Section 1 through 4 since these areas were last dredged. Prospective bidders are strongly urged to examine the material at the site of the work to assure themselves that they have made the best possible evaluation of the subsurface conditions. Bidders should form their own conclusions from this examination prior to submission of their bids. Records of previous dredging in the vicinity of the project are available in the office of the District Engineer, U.S. Army Engineer District, Savannah, 100 West Oglethorpe Avenue, Savannah, Georgia 31402.

(i) Disposal Areas. Designated disposal area is shown on the contract drawings and is listed in paragraph DISPOSAL OF EXCAVATED MATERIALS in Section: DREDGING. The Contractor will not be allowed to use any disposal area for this work other than those identified in paragraph DISPOSAL OF EXCAVATED MATERIAL IN SECTION: DREDGING.

(j) Channel Conditions. The existing channel was previously dredged to the required depth as shown on the contract drawings, in areas covered by this contract. U.S. Coast Guard navigation aids exist in the contract area. The removal of those aids will be done by the Coast Guard. The Contractor shall protect the aids from damage during dredging and coordinate their movement with the Coast Guard through the Contracting Officer. The latest dredging contracts are as follows:

| Contract No. | Stations Dredged | Required Depth |
|---|---|---|
| DACW21-00-C-0006 | 0+000 to -40+000B | -44 mlw |
| DACW21-01-C-0002 | 0+000 to -40+000B | -44 mlw |
| DACW21-02-C-0002 | 0+000 to -40+000B | -44 mlw |
| DACW21-03-C-0002 | 0+000 to -30+000B | -44 mlw |
| W912HN-04-C-0002 | 0+000 to -40+000B | -44 mlw |

(k) Condition of Channel. Controlling low water depths in the area to be dredged are shown on the maps referred to in clause CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (DFARS 52.236-7001) and in Attachment 1 of SECTION 00800. Navigational aids are shown on the contract drawings and can be found on NOAA Charts No. 11512, "Savannah River and Wassaw Sound," No. 11500, "Tybee Island to Doboy Sound," and No. 11513, "St. Helena Sound to Savannah River." There are no pipelines, cables or bridges in the area to be dredged, although there may be other unknown and/or uncharted submerged obstructions, such as logs, anchors, and other debris.

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by . . . . . [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions . . . . . (insert a summary of weather records and warnings).

(c) Transportation facilities . . . . . (insert a summary of transportation facilities providing access from the site, including information about their availability and limitations.

(d) . . . . . (insert other pertinent information).

**FOR: BRUNSWICK AREA**

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) Physical Conditions. The physical conditions indicated on the drawings and in the specifications are the result of the site investigations by surveys and soundings. Contractors are expected to visit the work site and determine for themselves the characteristics of the material to be dredged.

(b) Weather Conditions. The project area has long, warm summers and short, mild winters. The coastal portion is slightly warmer in winter and receives more rain in summer and fall than interior areas, but rainfall is usually plentiful throughout the basin.

(1) The annual normal rainfall at Brunswick, Georgia, is 53.32 inches:

(A) Record (63 years)
Maximum Monthly -- 22.86 inches September 1953

(B) Record (62 years)
Minimum Monthly -- 0.09 inch November and December 1956

(C) Record (67 years)
Maximum 24 Hour -- 19.1 inches August 1911 (at St. George)

Normally about 29 inches of rain falls during the thunderstorm season of 15 June through 15 September (averaging 6.5 inches per month from July through September). The remainder of the annual rainfall, produced principally by squall-line and frontal showers, is spread over 9 months. Considerable periods of fair, mild weather are experienced in October, November, April, and to a less extent, in May. Snow is a rarity and even a trace does not occur on an average of once a year. Severe tropical storms affect this area about once in 10 years. Rainfall from these storms constitutes our heaviest sustained precipitation. Instances of this are the 22.86 inches in September 1953, and 16.37 inches in August 1953, most of which was from tropical storms.

(2) The average normal monthly temperature at Brunswick, Georgia, is 69.2 degrees F. with seasonal averages as follows:

| Season | Degrees Fahrenheit |
|---|---|
| Winter | 55 to 61 |
| Spring | 68 to 81 |
| Summer | 79 to 82 |
| Fall | 56 to 71 |

Extreme temperatures are as follows:

(A) Normal Daily Maximums ------ 91.8 degrees F. August
64.5 degrees F. December

(B) Average Normal Monthly
Maximum ---------- 82.4 degrees F. July

(C) Normal Daily Minimums ------ 43.5 degrees F. January
73.5 degrees F. July

(D) Average Normal Monthly
Minimum ---------- 55.4 degrees F. January

(E) Record (58 years) Maximum -- 104 degrees F. July 1954

(F) Record (67 years) Minimum -- 11 degrees F. December 1983

The average daily temperature ranges from 54 degrees F. in January to 82 degrees F. in July. In January, the average daytime minimum and maximum temperatures range from 44 degrees F. to 64 degrees F., and in July from 72 degrees F. to 92 degrees F. During an average year, the temperature drops below 32 degrees F. about 20 times in the northwest area and about 6 times along the coast. Ninety degrees is exceeded in an average year about 70 times along the coast and slightly more than 100 times in the northwest portion of the area. The frost-free growing season of the area ranges from about 250 days near Douglas, Georgia, to 300 days along the coast.

The average relative humidity at 1 p.m. is 53 percent and monthly averages range from a low of 46 percent in April to a high of 58 percent for the months of September and December.

(3) Wind and visibility at Brunswick are similar to Savannah, Georgia, where the annual average wind speed, for the past 37 years of record, is 7.9 mph, southwest, with the highest monthly mean occurring in March at 9.2 mph, west-northwest, and the lowest monthly mean in August at 6.6 mph, southwest. Extreme winds (fastest 1minute values) vary from 46 mph west in March 1981 to 68 mph east in May 1984. Weather Bureau records for Savannah, Georgia, give the following data:

| | Clear | Partly Cloudy | Cloudy | Thunder-storms | Dense Fog* |
|---|---|---|---|---|---|
| Years of Record | 37 | 37 | 37 | 37 | 37 |
| Number Days per Year | 103 | 110 | 152 | 62 | 39 |

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*NOTE: Heavy fog, visibility 1/4 mile or less.

The Brunswick area averages 9 hours of sunshine a day in the summer and 5 to 6 hours a day in the winter. Summer rainfall is characterized by brief showers. There are few completely cloudy days.

(c) Transportation Facilities. Railway facilities are available at Brunswick, Georgia. The area to be dredged is accessible by barge through the Atlantic Intracoastal Waterway.

(d) Location. The proposed dredging sites located in the Brunswick Harbor Entrance Channel, Brunswick, Glynn County, Georgia, are Brunswick Bar Channel (St. Simons Range) from Station -8+000B to -40+000B and Cedar Hammock Range from Station 15+000 to 24+000. The center of the project area lies approximately 31 degrees 05' north latitude and 81 degrees 18' west longitude.

(e) Local Tide Conditions. The area to be dredged is subject to severe wave action and exposure to severe storm. The mean tidal range is 6.5 feet and the spring range is 7.6 feet. Current velocities average 1.9 to 2.1 knots. The working season lasts throughout the year.

(f) Channel Traffic. The traffic that may be expected to use the channel during the progress of the dredging consists of ocean-going vessels, towboats, barges, and various small craft. According to Waterborne Commerce Statistics, in 1999 approximately 1705 vessels entered the harbor. Of the total 3410 trips in and out of the harbor, approximately 435 trips were made by vessels with static loaded drafts of 30 feet or greater. These statistics indicate that we may expect an average of 40 trips per month by vessels with static loaded drafts of 12 feet or greater.

(g) Obstruction of Channel. The Government will not undertake to keep the channel free from vessels or other obstructions, except to the extent of such regulations, if any, as may be prescribed by the Secretary of the Army, in accordance with the provisions of Section 7 of the River and Harbor Act approved 8 August 1917. The Contractor will be required to conduct the work in such a manner as to obstruct navigation as little as possible, and in case the Contractor's plant so obstructs the channel as to make difficult or endanger the passage of vessels, said plant shall be promptly moved on the approach of any vessel to such an extent as may be necessary to afford a practicable passage. Upon completion of the work the Contractor shall promptly remove his plant, including ranges, buoys, piles and other markers placed by him under the contract in navigable waters or on the shore.

(h) Subsurface Investigations. No subsurface investigations have been performed since these areas were last dredged. Prospective bidders are strongly urged to examine the material at the site of the work to assure themselves that they have made the best possible evaluation of subsurface conditions. Bidders should form their own conclusions from this examination prior to submission of their bids. Records of previous dredging in the vicinity of the project are available in the office of the District Engineer, U.S. Army Engineer District, Savannah, 100 West Oglethorpe Avenue, Savannah, Georgia 31402.

(i) Disposal Areas. The designated disposal area is shown on the contract drawings and is listed in paragraph DISPOSAL OF EXCAVATED MATERIALS in SECTION: DREDGING. The Contractor will not be allowed to use any disposal area for this work other than those identified in paragraph DISPOSAL OF EXCAVATED MATERIAL IN SECTION: DREDGING

(j) Channel Conditions. The existing channels in Brunswick Bar (St. Simons Range and Cedar Hammock Range) were previously dredged to 38 feet below mlw and 32 feet below mlw, respectively. U.S. Coast Guard navigation aids exist in the contract area. The removal of those aids will be done by the Coast Guard, unless directed otherwise by the Contracting Officer. The Contractor shall protect the aids from damage during dredging operations and coordinate their movement with the Coast Guard through the Contracting Officer. Thirty days' notice is required for buoy movements. The latest dredging contracts are as follows:

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| Contract No. | Stations Dredged | Required Depth |
|---|---|---|
| DACW21-99-C-0003 | -15+500 to -39+000<br>And<br>17+000 to 19+800 | -32 mlw<br>and<br>-30 mlw |
| DACW21-00-C-0006 | -14+000 to -40+000<br>And<br>16+750 to 21+500 | -32 mlw<br>and<br>-30 mlw |
| DACW21-01-C-0002 | -16+500 to -45+000<br>And<br>16+000 to 21+250 | -32 mlw<br>and<br>-30 mlw |
| DACW21-02-C-0002 | -14+000 to -36+500 | -32 mlw |
| DACW21-03-C-0000 | 6+250 to -40+000 | -32 mlw<br>and<br>-38 mlw |
| DACW21-02-C-0008 | 6+250 to -40+000 | -36 mlw<br>and<br>-38 mlw |

(k) The Contractor shall promptly give a written notice, within 3 days to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(l) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(m) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (I)(A) above for giving written notice may be extended by the Contracting Officer.

(n) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract. (FAR 52.236-2 DIFFERING SITE CONDITIONS.)

(o) The contractor acknowledges that he has taken steps reasonably necessary to ascertain the nature and location of the work, and that he has investigated and satisfied himself 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 he has satisfied himself as 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.

(p) 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 of 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 (FAR 52.236-3 - SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK).

(End of clause)

52.236-4015 PRECONSTRUCTION CONFERENCE (OCT 1988 SAS) (Ref. FAR 36.305)

(a) A preconstruction conference will be arranged by the Contracting Officers Representative (COR) after award of contract and before commencement of work. The COR will notify the Contractor of the time and date set for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and construction matters.
(b) The Contractor shall bring to this conference, in completed form, a Certificate of Insurance and Power of Attorney. The Contractor will submit the following items at least 14 days prior to the preconstruction conference in either completed or draft form:

Accident Prevention Plan (5 copies)
(use format shown in Attachment 1 to SECTION 00800)
Quality Control Plan (5 copies)
Letter Appointing Superintendent
Transmittal Register
Power of Attorney and Certified Copy of Resolution
Network Analysis System, when applicable
List of Subcontractors
Dredging and Disposal Plan,
Proposed Environmental Protection Plan
Endangered Species Watch Plan

(c) A letter of record will be written documenting all items discussed at the conference, and a copy will be furnished by the COR to all in attendance.

(End of clause)

52.236-4017 SUBMITTAL OF MODIFICATION COST ESTIMATE PROPOSALS (MAR 1992 SAS)
(Ref. DFARS 52.236-7000)

When submittals of Cost Estimate Proposals are required for additions or deletions to work under this contract by modification, the Contractor shall use DA Form 5418-R titled "Cost Estimate Analysis" (see Attachment 1 to SECTION 00800). A separate assemblage will be prepared for submittal by each trade affected by the proposed work.
(End of clause)

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.

(End of clause)

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

52.249-4001 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (APR 1991 OCE)
(Ref. FAR 52.249-10)

(a) This provision specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the contract clause entitled DEFAULT (FIXED-PRICE CONSTRUCTION). In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

(1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

(2) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

(b) The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORKDAYS BASED ON 5-DAY WORK WEEK

| JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2 | 4 | 4 | 2 | 4 | 5 | 5 | 4 | 6 | 2 | 1 | 1 | GLYNN COUNTY |
| 6 | 6 | 5 | 4 | 5 | 7 | 9 | 8 | 5 | 2 | 3 | 6 | CHATHAM/JASPER |

(c) Upon acknowledgment of the Notice to Proceed and continuing through-out the contract, the Contractor will record on the daily Contractor Quality Control report the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day in each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph (b) above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather workdays, and issue a modification in accordance with the contract clause entitled DEFAULT (FIXED PRICE CONSTRUCTION).
(End of clause)

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS - EFARS

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)

ATTACHMENT 1 TO SECTION 00800

1. Contract Drawings:

   File No. CWK 502, Sheets 1 through 27

2. Rates of Wages

3. Formats:

   Accident Prevention Plan (Ref. FAR 52.236-13 and EM 385-1-1)

   Disposal Areas

   Daily Contractor Quality Control Report

   Contractor Furnished Spoil Disposal Areas

   Endangered Species Protection and Awareness Program

   Contractor's Plant Data Sheet

   Certification Statement

4. Forms:

   SAS Form 9 - Activity Hazard Analysis

   SAD Form 1437a-R - Safety Checklist for Floating Plant (EM 385-1-1 and DvR 385-1-1)

   SAD Form 1437b-R - Safety Checklist for Launches, Motorboats and Skiffs (EM 385-1-1 and DvR 385-1-1)

   SAD FL 198 - Report of Safety Meeting

   ENG Form 27 - Report of Operations--Hopper Dredges

   ENG Form 1619-R – Plant and Equipment Schedule
   ****NOTE TO CONTRACTORS: ENG FORM 1619R IS REQUIRED TO BE ATTACHED TO BID FORM

   ENG Form 2454 - Construction Progress Chart

   ENG Form 3394 - Accident Investigation Report

   ENG Form 4025 - Transmittal of Shop Drawings, Equipment Dat, Material Samples, or Manufacturer's Certificates of Compliance

   Standard Form LLL-A - Disclosure of Lobbying Activities

5. Endangered Species Data:

   Sighting Information
   Figure 1 - The Eight Endangered Great Whales
   Identification Guide/Descriptions
   Turtle Observation Reporting Log
   Figures 2 through 4 - Turtle Deflectors
   USACE Sea Turtle/Dredging Database (Post Hopper Dredging Project Checklist)
   Endangered Species Observer Program
   Load Data Form
   Daily Report
   Weekly Summary
   Sea Turtle Incidental Take Data Form

- Kemp's Ridley
- Green Turtle
- Loggerhead
- Leatherback

Sturgeon Incidental Take Data Form
Large Whale Observation Data
NMFS Regional Biological Opinion (1997, Aug 1995)

## General Decision Number GA030080

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 General Decision Number GA030080
 Superseded General Decision No. GA020080
 State: Georgia
 Construction Type:
 DREDGING
 County(ies):
 STATEWIDE
 HOPPER DREDGE CONSTRUCTION PROJECTS
 Modification Number     Publication Date
             0             06/13/2003
COUNTY(ies):
STATEWIDE
 SUGA2004A  05/24/1993
                                     Rates           Fringes
SELF-PROPELLED HOPPER DREDGE:
 Drag tender                           8.21
-----------------------------------------------------------------
WELDERS - Receive rate prescribed for craft performing operation
to which welding is incidental.
=================================================================
Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29 CFR 5.5(a)(1)(ii)).
-----------------------------------------------------------------
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.
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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

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Last revised 9 May 97

FORMAT
(Ref. FAR 52.236-13 and EM 385-1-1 dated 3 Sep 96)
ACCIDENT PREVENTION PLAN

MINIMUM BASIC OUTLINE FOR ACCIDENT PREVENTION PLAN

An accident prevention plan is, in essence, a safety and health policy and program document. The following areas are typically addressed in an accident prevention plan, but a plan shall be job specific and shall also address any unusual or unique aspects of the project or activity for which it is written. The accident prevention plan shall interface with the employer's overall safety and health program. Any portions of the overall safety and health program that are referenced in the accident prevention plan shall be included as appropriate.

1. SIGNATURE SHEET. Title, signature, and phone number of the following:

a. Plan preparer (corporate safety staff person, QC);

b. Plan approval, e.g., owner, company president, regional vice president (HTRW activities require approval of a Certified Industrial Hygienist (or qualified Industrial Hygiene personnel for in-house USACE activities; a Certified Safety Professional (or qualified USACE safety personnel for in-house work) may approve the plan for operations involving UST removal where contaminants are known to be petroleum, oils, or lubricants);

c. Plan concurrence (provide concurrence of other applicable corporate and project personnel (contractor)), e.g., Corporate Chief of Operations, Corporate Chief of Safety, Corporate Industrial Hygienist, project manager or superintendent, project safety professional, project QC. The plan will be developed by qualified personnel (plan preparer) and will be signed by a competent person (plan concurrence) and a representative of the prime contractor's project management team (plan approval).

2. BACKGROUND INFORMATION. List the following:

a. Contractor;

b. Contract number;

c. Project name;

d. Brief project description, description of work to be performed, and location (map);

e. Contractor accident experience (provide information such as EMR, OSHA 200 Forms, corporate safety trend analyses);

f. Listing of phases of work and hazardous activities requiring activity hazards analyses.

3. STATEMENT OF SAFETY AND HEALTH POLICY. (In addition to the corporate policy statement, a copy of the corporate safety program may provide a

significant portion of the information required by the accident prevention plan.)

4. RESPONSIBILITIES AND LINES OF AUTHORITIES.

a. Identification and accountability of personnel responsible for safety - at both corporate and project level (contracts specifically requiring safety or industrial hygiene personnel should include a copy of their resume - the District Safety and Occupational Health Office will review the qualifications for acceptance). For items in EM 385-1-1 which require the use of a competent person or a qualified person, the contractor is to maintain documentation demonstrating the competence or qualification of that individual.

b. Lines of authority

5. SUBCONTRACTORS AND SUPPLIERS. Provide the following:

a. Identification of subcontractors and suppliers (if known);

b. Means for controlling and coordinating subcontractors and suppliers;

c. Safety responsibilities of subcontractors and suppliers.

6. TRAINING.

a. List subjects to be discussed with employees in safety indoctrination.

b. List mandatory training and certifications which are applicable to this project (e. g., explosive actuated tools, confined space entry, crane operator, diver, vehicle operator, HAZWOPER training and certification, personal protective equipment) and any requirements for periodic retraining/recertification.

c. Identify requirements for emergency response training.

d. Outline requirements (who attends, when given, who will conduct etc.) for supervisory and employee safety meetings.

e. Identify location at the project site where the records will be maintained.

7. SAFETY AND HEALTH INSPECTIONS. Provide details on:

a. Who will conduct safety inspections (e.g., project manager, safety professional, QC, supervisors, employees, etc.), when inspections will be conducted, how the inspections will be recorded, deficiency tracking system, follow-up procedures, etc;

b. Any external inspections/certifications which may be required (e.g., Coast Guard).

8. SAFETY AND HEALTH EXPECTATIONS, INCENTIVE PROGRAMS, AND COMPLIANCE.

a. The company's written safety program goals, objectives, and accident experience goals for this contract should be provided.

b. A brief description of the company's safety incentive programs (if any) should be provided.

c. Policies and procedures regarding noncompliance with safety requirements (to include disciplinary actions for violation of safety requirements) should be identified.

d. Provide written company procedures for holding managers and supervisors accountable for safety.

9. ACCIDENT REPORTING. The contractor shall identify who shall complete the following, how, and when:

a. Exposure data (man-hours worked);

b. Accident investigations, reports and logs;

c. Immediate notification of major accidents.

10. MEDICAL SUPPORT. Outline on-site medical support and off-site medical arrangements.

11. PERSONAL PROTECTIVE EQUIPMENT. Outline procedures (who, when, how) for conducting hazard assessments and written certifications for use of personal protective equipment.

12. PLANS (PROGRAMS, PROCEDURES) REQUIRED BY THE SAFETY MANUAL (as applicable).

a. Hazard communication program (01.B.04);

b. Emergency response plans:
- procedures and tests (01.E.01)
- spill plans (01.E.01, 06.A.02)
- fire fighting plan (01.E.01, 19.A.04)
- posting of emergency telephone numbers (01.E.04)
- wildfire prevention plan (09.K.01)
- man overboard/abandon ship (19.A.04)

c. Layout plans (04.A.01);

d. Respiratory protection plan (05.E.01);

e. Health hazard control program (06.A.02);

f. Lead abatement plan (06.B.05 & specifications);

g. Asbestos abatement plan (06.B.05 & specifications);

h. Abrasive blasting (06.H.01);

i. Confined space (06.1);

j. Hazardous energy control plan (12.A.07);

k. Critical lift procedures (16.C.17);

l. Contingency plan for severe weather (19.A.03);

m. Access and haul road plan (22.1.10);

n. Demolition plan (engineering and asbestos surveys) (23.A.01);

o. Emergency rescue (tunneling) (26.A.05);

p. Underground construction fire prevention and protection plan (26.D.01);

q. Compressed air plan (26.1.01);

r. Formwork and shoring erection and removal plans (27.B.02);

s. Lift slab plans (27.D.01);

t. SHP and SSHP (for HTRW work an SSHP must be submitted and shall contain all information required by the accident prevention plan - two documents are not required (28.B.01);

u. Blasting plan (29.A.01);

v. Diving plan (30.A.13);

w. Plan for prevention of alcohol and drug abuse (Defense Federal Acquisition Regulation Supplement Subpart 252.223-7004, Drug-Free Work Force).

13. The Contractor shall provide information on how they will meet the requirements of major sections of EM 385-1-1 in the accident prevention plan. Particular attention shall be paid to excavations, scaffolding, medical and first aid requirements, sanitation, personal protective equipment, fire prevention, machinery and mechanized equipment, electrical safety, public safety requirements, and chemical, physical agent, and biological occupational exposure prevention requirements. Detailed site-specific hazards and controls shall be provided in the activity hazard analysis for each phase of the operation. Site-specific hazards are those hazards which would be reasonably be anticipated to occur on the construction site of concern and will be identified through analysis of the activities to be performed. The controls are measures which will be implemented by the contractor to eliminate or reduce each hazard to an acceptable level.

DISPOSAL AREAS

1. Location of Disposal Area _____

a. Time of Inspection _____

(1) Is dredged material properly confined in accordance with specifications? _____

(2) Comments _____

b. Name of Inspector _____

2. Location of Disposal Area _____

a. Time of Inspection _____

(1) Is dredged material properly confined in accordance with specifications? _____

(2) Comments _____

b. Name of Inspector _____

3. Location of Disposal Area _____

a. Time of Inspection _____

(1) Is dredged material properly confined in accordance with specifications? _____

(2) Comments _____

b. Name of Inspector _____

_____

Remarks: (Cover any conflicts in plans, specifications, or instructions)

CONTRACTOR'S CERTIFICATION: I certify that the above report is complete and correct and that all material and equipment used and work performed during this reporting period where in strict compliance with the contract plans and specifications except as noted above.

_____

Contractor's Approved Authorized Representative

CONTRACTOR'S NAME
(Address)

DAILY CONTRACTOR QUALITY CONTROL REPORT

Date: _____ Report No. _____

Contract No. _____

Description and Location of Work: _____

Weather: (Clear) (P. Cloudy) (Cloudy); Temperature: ___ Min. ___ Max; ___

Rainfall _____ inches

Contractor/Subcontractors and Area of Responsibility

1. Work Performed Today: (Indicate location and description of work performed. Refer to work performed by prime and/or subcontractors by letter in table above.)

2. Results of Surveillance: (Include satisfactory work completed, or deficiencies with action to be taken.)

3. Tests required by Plans and/or Specifications Performed and Results of tests:

4. Verbal Instructions Received: (List any instructions given by Government personnel on construction deficiencies, retesting required, etc., with action to be taken.)

5. Remarks: (Cover delays and any conflicts in plans, specifications, or instructions.)

6. Safety Inspection: (Report violations noted; corrective instructions given; and corrective actions taken.)

7. Equipment Data: (Indicate items of construction equipment, other than hand tools, at jobsite, and whether or not used.)

CONTRACTOR'S VERIFICATION: The above report is complete and correct and all material and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications except as noted above.

Contractor's Approved Authorized Representative

CONTRACTOR-FURNISHED SPOIL, DISPOSAL AREAS

This bid under Invitation No. _____
Fill in solicitation Number

for _____
List Title of solicitation

is based on using the following spoil disposal area(s) which are not shown on the contract drawings.

1. DESCRIPTION:

2. LOCATION:

3. OWNER AND ADDRESS:

4. SIZE OF AREA(S):

5. FILL HEIGHT OR OTHER SPOILING RESTRICTIONS:

6. CAPACITY OF AREA(S) (Cu. Yds.):

7. TIME LIMITATION FOR USE OF AREA(S):

8. NUMBER AND TYPE OF ROAD CROSSING(S) REQUIRED:

9. DIKING REQUIRED:

10. PLANNED LOCATION OF SPILLWAY(S):

Written evidence of consent by owner(s) for use of spoil disposal area(s) is attached.

Written evidence of the consent of the owner(s) for use of property involved in obtaining access to the spoil disposal areas is attached.

Written evidence of consent for the use of such disposal area(s) by applicable conservation and pollution agencies are attached.

Sketch(es), to the same scale as the contract drawings, showing the location(s) of spoil area(s) to be used and access thereto are attached.

_____
Name of Company

_____
Signature of Bidder

_____
Date

(SAMPLE WATCH PLAN FORMAT)

(Name of Dredging Company)

ENDANGERED SPECIES PROTECTION AND AWARENESS PROGRAM
(PROJECT NAME)

A. PURPOSE: Protection of an endangered species (manatee, sea turtles, whales, etc.) during dredging and disposal operations for the above project.

B. EDUCATION OF EMPLOYEES: Prior to initial work, job site meetings will be conducted by an environmental consultant, who will familiarize all employees with the habits and habitats of the locally found endangered species, together with detailed instructions and procedures for reporting endangered species sightings. This environmental consultant shall be familiar with the endangered species listed in paragraph D. below and Federal regulations regarding their protection. Additional meetings will be conducted by an onsite coordinator as needed.

C. AWARENESS: In order to provide a continuous reminder to employees of the endangered species program, graphics will be displayed about the operating equipment and employees provided with visual personal display.

D. WATCH PLANS: A watch plan that is adequate to protect endangered species from the impacts of dredging must be approved by the Contracting Officer and used during known times of endangered species presence. This plan shall be submitted for approval prior to the preconstruction conference. The watch plan should cover an area adequate to protect the endangered species from impacts associated with all types of dredging activities (i.e., dredging, disposal, blasting, etc.). All activities should stop when an endangered specie(s) is in the impact zone and not resume until the specie(s) is no longer in the impact zone. Surveillance is mandatory for the following species which are most likely to be present during the following times:

Manatee ---------- March through December
Sea turtles ---------- April through December
Whales ---------- December through March

Surveillance must be conducted to whatever extent (aerial, waterborne, etc.) necessary to detect the endangered species.

E. REPORTS: All sightings must be reported immediately to the dredge inspector within 24 hours of the sighting. Additionally, all sightings must be included in the daily report. Following completion of the project, copies of the daily reports with sightings shall be forwarded to the Dredging Section, ATTN: CESAS-OP-NN, U.S. Army Engineer District, Savannah, P.O. Box 889, Savannah, Georgia 31402-0889. All of the reports must be dated and signed by the Contractor or his representative including the name of the person making the sighting.

F. SUBMITTALS: The Contractor shall submit the Endangered Species Protection and Awareness Program in the above format to the Contracting Officer for his approval before work is commenced in the times identified in Item D above. The submittal must identify the program's coordinator, surveillance personnel, and who will be responsible for reporting sightings.

# CONTRACTOR'S PLANT DATA SHEET

## DREDGE DATA

Dredge Name: _____ Built by: _____ Year of Manufacture: _____

Acquisition Date: _____ Pump Horsepower: _____ I.D. Suction (in): _____ Pump Engine RPM's (max): _____

RPM's (avg running): _____ Reduction Gear to Pump: _____ Pump size (in.): _____ Pump RPM's (max): _____

Impeller Dia (in): _____ Eye Dia (in). _____ Cutter HP: _____ Cutter Dia: _____ Ladder Weight: _____

Ladder pump HP (if equipped): _____ Max swing width (include spud barge if applicable): _____

Other HP: _____ Total HP: _____ Ladder length_____ Max. Digging Depth_____

## BOOSTER PUMP DATA (if applicable)

Total Pump HP: _____ Pump Engine RPM's: _____ Pump Size: _____ Reduction Gear to Pump: _____

Pump RPM's: _____ Impeller Dia (in): _____ Eye Dia (in): _____ Discharge Dia (in): _____

Suction Dia (in): _____ Year of Manufacture: _____ Acquisition Date: _____

## BOOSTER PUMP BARGE MOUNTED DATA (if applicable)

Total Pump HP: _____ Pump Engine RPM's: _____ Pump Size: _____ Reduction Gear to Pump: _____

Pump RPM's: _____ Impeller Dia (in). _____ Eye Dia (in): _____ Discharge Dia (in): _____

Suction Dia (in): _____ Description: _____ Manufacture Year: _____ Acquisition Year: _____

Barge Input: _____ Description: _____ Manufacture Year: _____ Acquisition Year: _____

## TUGS & TENDER DATA

Tug Name: _____ HP. _____ Year of Manufacture: _____ Acquisition date: _____

Description: _____

Tug Name: _____ HP: _____ Year of Manufacture: _____ Acquisition date: _____

Description: _____

Tender Name: _____ HP: _____ Year of Manufacture: _____ Acquisition date: _____

Description: _____

Tender Name: _____ HP: _____ Year of Manufacture: _____ Acquisition date: _____

Description: _____

Tender Name: _____ HP: _____ Year of Manufacture: _____ Acquisition date: _____

Description. _____

## DERRICK BARGE

Description: _____ Capacity (tons): ____ Year of Manufacture: ____ Total HP: ____ Acquisition date: ____

## CRANE BARGE

Description: _____ Capacity (tons): ____ Year of Manufacture: _____ Acquisition date: _____

**FUEL/WATER BARGE**

Description: _____ Year of Maufacture: _____ Acquistion date: _____

**SKIFF WITH MOTOR**

Description: _____ Year of Maufacture: _____ Acquistion date: _____

**WORK BARGE**

Description: _____ Year of Maufacture: _____ Acquistion date: _____

**WORK BARGE**

Description: _____ Year of Maufacture: _____ Acquistion date: _____

**WORK BARGE**

Description: _____ Year of Maufacture: _____ Acquistion date: _____

**OTHER MISCELLANEOUS EQUIPMENT**

Description: _____ Year of Manufacture: _____ Acquisition date: _____ Total HP: _____

Description: _____ Year of Manufacture: _____ Acquisition date: _____ Total HP: _____

Description: _____ Year of Manufacture: _____ Acquisition date: _____ Total HP: _____

**CREW/SURVEY BOAT**

Description: _____ Year of Manufacture: _____ Acquisition date: _____ Total HP: _____

**DREDGE/SUPPORT PLANT PERSONNEL**

List only personnel who will be performing work on this job)

| Wage Classification | # of Employees |
|---|---|
| Superintendent | _____ |
| Chief Engineer | _____ |
| Watch Engineer | _____ |
| Tugmaster | _____ |
| Maintenance Engineers | _____ |
| Electrician | _____ |
| Welders | _____ |
| Deckhands | _____ |
| Mess Cook | _____ |
| Shoreman | _____ |

| Wage Classification | # of Employees |
|---|---|
| Captain | _____ |
| Leverman | _____ |
| Dredge Mates | _____ |
| Launchmen | _____ |
| Tug Mates | _____ |
| Equipment Operators | _____ |
| Oilers | _____ |
| Cook | _____ |
| Dump Foreman | _____ |
| Janitor | _____ |
| | _____ |
| | _____ |
| | _____ |
| TOTAL | _____ |

CERTIFICATION STATEMENT

CONTRACT: _____

ACCEPTANCE SECTION/SURVEY: _____

REFERENCED SOURCE DOCUMENT: _____

I have fully observed the performance of the subject survey and have determined, based on my review of the referenced source document record, that the data contains no evidence of error. The recorded data, including calibration corrections thereto, have been obtained in accordance with the systematic/procedural methods and techniques described under SECTION 02100 DREDGING of the contract specifications, that all known and unknown systematic and random errors have been minimized consistent with: (1) the relative precision levels of the equipment utilized, and (2) absolute accuracies expected (or likely) given current (state-of-the-art) horizontal and vertical measurement limitations associated with offshore survey systems, procedures, and related variables; and, as such, the observed/recorded data are fully and finally acceptable for determining and measuring contract performance and payment.

AUTHORIZED REPRESENTATIVE _____

/s/ _____

TITLE _____

DATE _____

CF: Contractor Representative Area Office

ACTIVITY HAZARD ANALYSIS

| | | |
|---|---|---|
| 1. Phase of Construction | | |
| 2. Location | 3. Contract No. | 4. Project |
| 5. Prime Contractor | 6. Date of Preparatory | 7. Estimated Start Date |
| Potential Safety Hazard | Procedure to Control Hazard | |
| | | |
| 8. Contractor's Representative (signature) | 9. | |

SAS Form 9
1 Jan 82

# SAFETY CHECKLIST FOR FLOATING PLANT

| | |
|---|---|
| Contract # and title: | |
| Contractor: | Subcontractor: |
| Plant Name: | Owner: |
| Superintendent: | Captain: |
| Engineer: | Number in crew: |
| Contract inspector: | Date inspected: |

| **This checklist references EM 385 1-1, revised 3 November 2003** | **Yes** | **No** | **N/A** |
|---|---|---|---|
| 1. Is a copy of the current USCG Form 835 available for plants regulated by USCG? (19.A.01) | | | |
| 2. Is documentation of an accredited marine surveyor (SAMS or NAMS) available for non-USCG inspected plants? (19.A.01) | | | |
| 3. Do all officers and crew posses an appropriate USCG license or USACE license and certification? (19.A.02) | | | |
| 4. Are periodic inspections and test records of all floating plant, equipment, and machinery available as part of the official project file? (19.A.01) | | | |
| 5. Is there a severe weather plan which contains the following available? (19.A.03)<br>a. A description of potential types of severe weather hazards and steps to guard against the hazards?<br>b. The time frame for implementing the plan?<br>c. The name and location of the safe harbor?<br>d. The name of the vessels which will be used to move any non-self propelled plant, and their type, capacity, speed, and availability?<br>e. River gage readings at which floating plant must be moved away from dams, river structures, etc. to safe areas? | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 6. Is the station bill conspicuously posted throughout the vessel? (19.A.04) | | | |
| 7. Has each crewmember been given a written description of their emergency duties and are they familiar with them? (19.A.04) | | | |
| 8. Have the following drills and tests been recorded in the station log? (19.A.04)<br>a. Abandon ship drill?<br>b. Fire drill?<br>c. Man overboard drill?<br>d. Pump shell or pipe rupture?<br>e. Hull failure?<br>f. Emergency power and lighting tests?<br>g. Bimonthly emergency power generator tests?<br>h. Bimonthly emergency lighting storage batteries tests?<br>Note: First set of drills shall be conducted within 24 hours of occupancy or commencement of work. | | | |
| 9. Are material safety data sheets (MSDSs) available for all hazardous materials on board? (06.B.01) | | | |
| 10. Are employees trained to handle hazardous materials? (06.B.01) | | | |
| 11. Are at least two employees on each shift certified in CPR and first aid? (03.A.02) | | | |
| 12. Is there a first aid log at each first aid station? (01.D.04) | | | |
| 13. Are first aid kits located in a readily accessible location and adequately stocked? (03.B.01 & .02) | | | |
| 14. Is there an adequate supply of approved, potable drinking water available? (02.A.01) | | | |
| 15. Are outlets dispensing non-potable water clearly marked “Water Unfit For Drinking, Washing or Cooking”? (02.A.07) | | | |
| 16. Are the proper numbers of toilets, washbasins and showers provided? (02.B.06 & .07) | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 17. Are water, soap, and a means of drying available? (02.C.02) | | | |
| 18. Is the latest information published by the USCG regarding aids to navigation available on board the vessel? (19.A.11) | | | |
| 19. Is the vessel equipped with: (19.A.05)<br>a. Fenders?<br>b. Axes or other emergency cutting equipment?<br>c. An appropriate navigational signal device?<br>d. General alarm system operated from primary electrical system with standby batteries on trickle charge?<br>e. Easily accessible emergency controls that are adequately protected against accidental operation?<br>f. Explosion-proof lights around gasoline and oil barges or other locations where a fire or explosive hazard exists?<br>g. Interconnected emergency alarms?<br>h. Smoke alarms in living quarters?<br>i. Carbon Dioxide CO monitors in all occupied spaces?<br>j. Doors that open from both sides?<br>k. Clearly marked emergency exits?<br>l. Emergency stops for prime movers operating a dredge pump?<br>m. GFCI protection on grounded 120 or 240-volt systems in toilet/shower spaces, galley, machinery spaces, weather deck, exterior or near any sinks?<br>n. Properly maintained and identified watertight compartments? | | | |
| 20. Fuel systems: (19.A.06)<br>a. Are tanks or lines free of gauge glasses or try cocks?<br>b. Do all fuel tanks have shutoff valves that can be operated outside the compartment in which the tank is located and outside the engine compartment and outside the house bulkheads at or above the weather deck?<br>c. Is there a shut off valve at the engine end of the fuel lines that are 6 feet or more in length and can it be operated from outside the house bulkheads at or above the weather deck?<br>d. Overboard discharge? | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| d. Are all carburetors on gasoline engines equipped with a backfire trap or flame arrestor?<br>e. Are all carburetors (except downdraft type) equipped with a drip pan, with flame screen, which is continuously emptied by suction from the intake manifold or if permitted by the overboard discharge?<br>f. Are fuel storage tanks diked or curbed IAW NAVFAC DM-22? If not are portable tanks used IAW USCG requirements in 46 CFR Parts 64 and 98.3? | | | |
| 21. Are cables which cross the waterways between floating plants or between plant and mooring marked? (19.A.07) | | | |
| 22. Is there a fire and emergency warning system (or an established fire watch) on all vessels where people are quartered? (19.A.07) | | | |
| 23. Are all floors, decks, and bilge's free of accumulation of fuel and grease? (19.A.07) | | | |
| 24. Are there holdbacks or rings available to secure equipment during rough weather? (19.A.07) | | | |
| 25. Are all deck openings, elevated surfaces, and similar locations provided with guardrails, bulwarks, or taut cable guard lines? (19.A.07) | | | |
| 26. Are all rotating machinery, hot pipes, and moving cables guarded against accidental contact? (16.B.03) | | | |
| 27. Are hazardous energy control procedures available to insure that machinery will not be operated while greasing or making repairs? (12.A.01 & 16.A.08) | | | |
| 28. Are decks free of tripping hazards or adequately marked in yellow? (19.A.07) | | | |
| 29. Is all deck cargo carried on fuel barges placed on dunnage? (19.A.07) | | | |
| 30. Are all pieces of floating plants operating as one unit securely fastened together with no openings (or with guarded openings)? (19.A.07) | | | |
| 31. Is there a list of confined spaces available? (19.A.08) | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 32. Are all permitted required confined spaces labeled? (19.A.08) | Yes | No | N/A |
| 33. Are engine spaces housing internal combustion engines having electric spark ignition systems equipped with exhaust fans? (19.A.10) | | | |
| 34. Are all machinery spaces and non-diesel fuel tanks compartments equipped with at least 2 ventilators, fitted with fans? (19.A.10) | | | |
| 35. Are the following spaces provided with an adequate natural ventilation system? (19.A.10)<br>a. Spaces containing a portable fuel tank?<br>b. Living spaces or galley?<br>c. Other compartment spaces? | | | |
| 36. Do vent intakes extend to within 1 foot of the bottom of the compartment? (19.A.10) | | | |
| 37. Is suitable eye protection provided at battery charging stations? (05.B.01 & .05) | | | |
| 38. Are eye wash stations provided at battery charging stations? (6.B.02) | | | |
| 39. Are flammable items such as paint and thinners properly stored? (9.B) | | | |
| 40. Are gasoline and other flammable liquids properly stored, dispensed, and handled? (09.B.01-.30) | | | |
| 41. Does all electrical wiring meet requirements of USCG-259, the National Electrical Safety Code and the National Electric Code? (11.A.01) | | | |
| 42. Are insulated mats provided at locations where machinery has exposed live parts? (11.A.07) | | | |
| 43. Are switch and transformer banks adequately protected and marked to keep unauthorized personnel out of the danger area? (11.A.02) | | | |
| 44. Are portable electric tools grounded by a multiconductor cord with an identified conductor and a multicontact polarized plug-in receptacle? (11.C.01) | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 45. Are ground fault circuit interrupters provided in locations where portable tools could be used? (11.C.05) | | | |
| 46. Are flexible cords protected in work area, appropriately secured or suspended and are they used for appropriate usages? (11.A.03 and Table 11-1) | | | |
| 47. Are all means of access properly secured, guarded and free of slipping and tripping hazards? (19.B.01) | | | |
| 48. Are all working decks, stair treads, ship ladders, platforms, catwalks, and walkways, provided with non-slip surfaces? (19.B.01) | | | |
| 49. Are grab bars provided on the sides of super structure of tugs, tenders, and launches except where railings are present? (19.B.01) | | | |
| 50. Are double rung or flat tread type Jacob's ladders restricted to use only when no safer form of access is practical? (19.B.01) | | | |
| 51. Is there a safe means for boarding or leaving the vessel? Note: Walking on rip-rap should be avoided where practical (19.B.02) | | | |
| 52. Is there a stairway, ladder, ramp, gangway, or personnel hoist provided at all personnel points of access with breaks of 19" or more in elevation? (19.B.02) | | | |
| 53. Are gangways and ramps: (19.B.02)<br>a. Secured at one end by at least one point on each side with lines or chains to prevent overturning?<br>b. Supported at the other end in such a manner as to support them and their normal loads in the event they slid off their supports?<br>c. Placed at an angle no greater than that recommended by the manufacturer?<br>d. Provided with a standard guardrail? | | | |
| 54. Are stairs or permanent inclined ladders provided for vertical access between decks? (9.B.03) | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 55. Is there at least 2 feet of clearance on outboard edges used for passageways? (19.B.3) | | | |
| 56. Is the vessel equipped with at least one portable or permanent ladder with at least one portable or permanent ladder with which to rescue a person in the water? (19.B.04) | | | |
| 57. Are there at least 2 means of escape from all assembly, sleeping and messing areas on the plant? (19.B.04) | | | |
| 58. Are all means of access maintained safe and functional? (19.B.04) | | | |
| 59. Are all floating pipelines used as walkways equipped with a walkway which is at least 20" wide and has a handrail on at least one side? (19.B.05) | | | |
| 60. Are floating pipelines that are not intended as walkways barricaded on both ends?(19B.05) | | | |
| 61. Are positive measures taken to raise and secure the ladder and to block suction and discharge lines during maintenance on pumps and suction or discharge lines? (19.D.01) | | | |
| 62. Do floating or trestle supported dredge pipelines display the following lights at night and in periods of restricted visibility: (19.D.02 and 33 CFR 88.13)<br>a. One row of yellow lights that :<br>(1) Flash 50-70 times per minute?<br>(2) Are visible all around the horizon?<br>(3) Are visible for at least 2 miles on a clear night?<br>(4) Are between 3-10 feet above the water?<br>(5) Are approximately evenly spaced?<br>(6) Are not more than 30 feet apart where the pipeline crosses a navigable channel?<br>(7) Are sufficient in number to clearly show the pipeline's length and course?<br>b. Two red lights at each end of the pipeline (including ends in a channel where the pipeline is separated to allow vessels to pass) that:<br>(1) Are visible all around the horizon?<br>(2) Are visible for at least 2 miles on a clear dark night?<br>(3) Are 3 feet apart in a vertical line with the lower light at the same height above the water as the flashing yellow light? | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 64. Is submerged pipeline resting on the bottom where it crosses the navigation channel and is it and the anchoring system no higher than the required project depth? (19.D.03) | | | |
| 65. Is buoyant or semi-buoyant pipeline fully submerged and on the bottom? (19.D.03) | | | |
| 66. Is raised pipeline adequately marked? (19.D.03) | | | |
| 67. Is a bilge alarm or shutdown interface available on any dredge with the dredge pump below the waterline? (19.D.07) | | | |
| 68. Are two positive means available to secure "stone boxes" when the boxes are under positive pressure? (19.D.08) | | | |
| 69. Dredge Disposal Sites (19.D.09)<br><br>a. Is there an adequate supply of drinking water?<br>b. Are toilet facilities provided?<br>c. Disposal area watchmen certified in CPR and first aid?<br>d. Is at least one 16-unit first-aid kit available? | | | |
| 70. Scows and Barges<br><br>a. Are scows dumping in open ocean waters equipped with remote opening devices to preclude the transfer of personnel between vessels?<br>b. Is a safety means of transferring personnel between the towing vessels and scow provided?<br>c. Have contractors identified general and site-specific adverse weather and sea conditions under which the towing of scows and cargo barges is prohibited?<br>d. Do all barges and scows comply with 46 CFR 174.010 through 174.020 for intact stability of deck cargo barges?<br>e. Are fall protection devices and equipment listed in 21.A.15 used on scows and open barges to prevent employees transiting between the stern and bow of the vessel from fallings into the hopper or falling off the side of the vessel to the structure located 6 feet for more below? | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

This checklist is a work simplification tool. It is not intended to replace safety and health standards, manufactures operating/maintenance manuals or national conscious standards. For current information consult the appropriate directive, manual or standard.

| | | | |
|---|---|---|---|
| Contractor inspector signature | | | |
| Contractor QC/safety officer/project manager signature | | | |

SAD Form 1437a-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

# SAFETY CHECKLIST FOR LAUNCHES, MOTORBOATS AND SKIFFS

| | |
|---|---|
| Contract # and title: | |
| Contractor: | Subcontractor: |
| Name of equipment: | Superintendent: |

| **This checklist references EM 385 1-1, revised 3 November 2003** | **Yes** | **No** | **N/A** |
|---|---|---|---|
| 1. Is a qualified crew person assigned to assist with deck duties under the following circumstances: (19.C.01)<br>a. When extended trips(more than 2 hours) are made from the work site?<br>b. When conditions of navigation make it hazardous for an operator to leave the wheel while underway?<br>c. When operations other than tying-in require the handling of lines?<br>d. When operating at night or in inclement weather?<br>e. When towing? | | | |
| 2. Are all motorboats, launches and skiffs posted with the number of passengers and weight they can carry? (19.C.02) | | | |
| 3. Is there a PFD available for each passenger and crewmember? (19.C.02) | | | |
| 4. Do all launches and motorboats that are less than 26 feet in length have at least one 1A-10B:C fire extinguisher on board? (19.C.03) | | | |
| 5. Do all launches and motorboats that are 26 feet or more in length have at least 2 1A-10B:C fire extinguishers on board? (19.C.03) | | | |
| 6. Do all launches and motorboats that have gasoline or liquid petroleum gas power plants or equipment in cabins, compartments, or confined spaces have built-in automatic CO2 or other equally effective type of fire extinguishing system? (19.C.03) | | | |
| 7. Are all cabins launches and motorboats equipped with “kill (dead man) switches”? (19.C.02(d)) | | | |

SAD Form 1437b-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

| This checklist references EM 385 1-1, revised 3 November 2003 | Yes | No | N/A |
|---|---|---|---|
| 7. Remarks: (Enter actions taken for “no” answers.)<br><br>This checklist is a work simplification tool. It is not intended to replace safety and health standards, manufactures operating/maintenance manuals or national conscious standards. For current information consult the appropriate directive, manual or standard. | | | |
| Contractor inspector signature | | | |
| Contractor QC/safety officer/project manager signature | | | |

SAD Form 1437b-R Previous editions may be used for contract submittals prior to Nov 03.
Reference: EM 385-1-1, 3 November 2003 edition.

REPORT OF SAFETY MEETING _____
(INSTALLATION, FIELD OFFICE, JOB, ETC.)

| THRU EN<br>CD<br>OP<br>RE<br><br>TO SO | FROM |
|---|---|

DATE _____ TIME _____(A.M./P.M.)

NO. EMPLOYEES PRESENT _____ DURATION _____

Old Business: (Review report of last meeting. Follow up on action taken or anticipated to correct any safety deficiencies brought up at last meeting. Discuss any unfinished business).

| | |
|---|---|
| | |
| | |

New Business: (Discuss any unsafe acts or conditions observed since last safety meeting and any mishaps or injuries which occurred during the week.)

| | |
|---|---|
| | |
| | |
| | |

Safety Presentation: (Safety talk, movie, or slide presentation on subject that is relevant to operation at hand.)

| | |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

DATE AND TIME OF NEXT MEETING

_____ _____
(Signature and Title)

SAD FL 198, 1 Par 80

# REPORT OF OPERATIONS -- HOPPER DREDGES

*RCS: ENGCW-O-13*

TO: COMMANDER/DIRECTOR
U.S. ARMY WATER RESOURCES SUPPORT CENTER
ATTN: WRSC-D, FORT BELVOIR, VA 22060

DISTRICT

DREDGE

EXACT LOCATION OF WORK

☐ MAINTENANCE
☐ NEW WORK
☐ CONSOLIDATED
☐ JOB REPORT

DATE

AV. NUMBER OF PERSONS IN CREW

| | | | |
|---|---|---|---|
| AV. LENGTH OF CUT FT. | CHARACTER OF MATERIAL | | |
| AV. WIDTH OF CUT FT. | ABSOLUTE DENSITY GMS/LITER | IN PLACE DENSITY GMS/LITER | WATER DENSITY GMS/LITER |
| AV. DIST. TO DUMP MILES | VOIDS RATIO | GRAIN SIZES: $D_{20-}$ MM. $D_{50-}$ MM. $D_{80-}$ MM. | |
| HOPPER CAPACITY CU. YDS. | AV. VOLUME OF WATER CU. YDS. | AV. UNFILLED CAPACITY CU. YDS. | |

NAVIGATION AND OTHER AIDS, INCLUDING STATEMENT AS TO ADEQUACY

## WORK PERFORMED

| CUBIC YARDS | THIS PERIOD | PREVIOUSLY | TO DATE |
|---|---|---|---|
| A. HAULED | | | |
| B. AGITATED | | | |
| C. PAY PLACE *(Credited)* | | | |
| D. EXCESS | | | |
| E. NATURAL SHOALING OR SCOURING | | | |
| F. TOTAL (C&E) | | | |

| | |
|---|---|
| NUMBER OF LOADS HAULED | NUMBER OF TEST LOADS |
| AV. LOAD CU. YDS. | AV. ECONOMIC LOAD CU. YDS. |
| AV. PUMPING TIME | AV. ECONOMIC PUMPING TIME MINS. |

### ATTENDANT PLANT

| NAME OF PLANT | TYPE | HOURS |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

### OPERATING SUPPLIES

| COMMODITIES | CONSUMED | | INVENTORY | |
|---|---|---|---|---|
| | UNIT | QUANTITY | QUANTITY | VALUE |
| FUEL (Oil) | BBLS. | | | |
| LUBRICANTS (Oil) | GALS. | | | |
| LUBRICANTS (Greased) | LBS. | | | |
| WATER | GALS. | | | |
| | | | | |
| SUBSISTENCE SUPPLIES | | | | |
| MISCELLANEOUS SUPPLIES | | | | |
| | | | TOTAL | |

## DISTRIBUTION OF TIME

| EFFECTIVE WORKING TIME *(Chargeable to Cost of Work)* | HOURS | MINUTES |
|---|---|---|
| DREDGING AND HAULING PUMPING | | |
| TURNING | | |
| TO AND FROM DUMP | | |
| DUMPING | | |
| TOTAL | | |
| AGITATION PUMPING AND TURNING | | |
| TOTAL EFFECTIVE WORKING TIME | | |
| PERCENTAGE OF RENTAL TIME | | |
| NONEFFECTIVE WORKING TIME *(Chargeable to Cost of Work)* | | |
| TAKING ON FUEL AND SUPPLIES | | |
| TO AND FROM WHARF OR ANCHORAGE | | |
| LOSS DUE TO OPPOSING NATURAL ELEMENTS | | |
| LOSS DUE TO TRAFFIC AND BRIDGES | | |
| MINOR OPERATING REPAIRS | | |
| TRANSFERRING BETWEEN WORKS | | |
| LAY TIME | | |
| FIRE AND BOAT DRILLS | | |
| MISCELLANEOUS | | |
| TOTAL NONEFFECTIVE WORKING TIME | | |
| PERCENTAGE OF RENTAL TIME | | |
| TOTAL RENTAL TIME | | |
| PERCENTAGE OF TOTAL TIME | | |
| LOST TIME *(Not Chargeable to Cost of Work)* | | |
| MAJOR REPAIRS AND ALTERATIONS | | |
| CESSATION | | |
| COLLISIONS | | |
| TOTAL LOST TIME | | |
| PERCENTAGE OF TOTAL TIME | | |
| TOTAL TIME IN PERIOD | | |

## MISCELLANEOUS DATA

| | |
|---|---|
| NUMBER OF INSPECTIONS BY FIELD SUPERVISORY PERSONNEL | PERCENT OF TOTAL PUMPING TIME GAS EJECTION IN USE |
| NUMBER OF INSPECTIONS BY OFFICE SUPERVISORY PERSONNEL | HOURS DURING PERIOD RADAR IN USE |

# COST DATA

| ITEMS | | COST |
|---|---|---|
| PAYROLLS *(gross)* | $ | |
| LESS SUBSISTENCE AND QUARTERS | | $ |
| SUBSISTENCE | | |
| FUEL ____ BBLS. AT $ | | |
| WATER | | |
| LUBRICANTS | | |
| PLANT RENTAL | | |
| INSURANCE | | |
| ATTENDANT PLANT | | |
| MISCELLANEOUS | | |
| TOTAL PLANT OPERATING COST | | |
| $____ HAULED $ ____ AGITATED | | |
| SURVEYS | $ | |
| INSPECTION AND SUPERVISION | | |
| OVERHEAD | | |
| OTHER INDIRECT COSTS | | |
| | SUBTOTAL | |
| TOTAL COST | | |

| TOTAL COST PER CUBIC YARD: | CREDITED | + SHOALING CREDITED - SCOURING | TOTAL COST TO REMOVE EXCESS |
|---|---|---|---|
| JOB EST | $ | $ | $ |
| THIS PERIOD | $ | $ | $ |
| JOB TO DATE | $ | $ | $ |
| OPERATING COST PER MINUTE AT WORK | | | $ |

FORMULA:

$$\frac{\text{EXCESS YARDAGE}}{\text{EXCESS + CREDIT}} \times \text{TOTAL COST} \begin{cases} \times \text{ SHOALING} \\ - \text{ SCOURING} \end{cases}$$

*(Based on effective plus noneffective time)*

DATA FROM PLANT COST AND RENTAL LEDGERS

| | | |
|---|---|---|
| BOOK VALUE | 19 | $ |
| BALANCE IN PLANT RENTAL ACCOUNT | | |
| ADDITIONS AND BETERMENTS TO VESSELS | | |
| ANNUAL: COSTS CHARGED TO PLANT RENTAL: | | |
| DEPRECIATION | | |
| CESSATION OF WORK | | |
| REPAIRS TO HULL | | |
| REPAIRS TO MACHINERY | | |
| SMALL TOOLS, ROPE, ETC. | | |
| TOTAL COST | | |

CHIEF BUDGET AND ACCOUNTS BRANCH

REMARKS

| SUBMITTED BY | RECOMMENDED | APPROVED |
|---|---|---|
| TITLE | TITLE | TITLE |

CORPS OF ENGINEERS

DISTRICT ENGINEER

# ***IMPORTANT***

**INFORMATION REQUESTED BELOW MUST BE SPECIFIC. GENERALITIES WILL NOT BE ACCEPTED.**

PLANT AND EQUIPMENT SCHEDULE
(Required to be attached to Bid Form)

AVAILABLE PLANT TO BE USED

| NO. | TYPE | CAPACITY | MANUFACTURER | AGE AND CONDITION | LOCATION |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

NOTES: In preparing the above tabulation the bidder shall insert the following information under the appropriate heading, using a separate line for each major item and an additional page if necessary.

a. Number. For dredges give identifying number or name.

b. Type. Under this heading, give description as follows: For crane, bucket, and dipper dredges show bucket capacity in cubic yards, horsepower of hoist engine, type of power, and number of swings per hour; for pipeline dredges, show inside diameter of discharge pipe, horsepower of pump engine, and type of power.

c. Capacity. Under this heading, state the estimated capacity of the plant in cubic yards per month when working materials similar to those which it is anticipated will be encountered in the performance of the work.

The following statement will be executed by all bidders:

The plant [ ] will, [ ] will not, have the facilities for furnishing the meals required by paragraph ACCOMMODATIONS AND MEALS FOR INSPECTORS of the Technical Provisions of the contract.

ENG Form 1619-R
31 March 1984

# CONSTRUCTION PROGRESS CHART

(EP 415-1-260)

REQUIREMENTS CONTROL SYMBOL

| | | | | |
|---|---|---|---|---|
| 1. CONTRACTOR | 3. PROJECT | 5. CONTRACT DESCRIPTION | 6. SUBMITTED FOR APPROVAL | DATE |
| 2. CONTRACT NUMBER | 4. LOCATION | | 7. APPROVAL RECOMMENDED | DATE |
| | | | 8. APPROVED | DATE |

LEGEND

BARS:

Scheduled progress to date of report

Actual progress

CURVES:

Scheduled progress _____ Actual progress .....

| PRINCIPAL CONTRACT FEATURE | LINE ITEM | WT | ESTIMATED COST | |
|---|---|---|---|---|
| | | | | SCHED. |
| | | | | ACTUAL |
| | | | | SCHED. |
| | | | | ACTUAL |
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| | | | | ACTUAL |

100
90
80
70
60
50
40
30
20
10
0

ENG FORM 1 JUNE 66 2454

PREVIOUS EDITION MAY BE USED.

☆ U.S. Government Printing Office: 1984—426-631/9022

| (For Safety Staff only) | REPORT NO. | EROC CODE | UNITED STATES ARMY CORPS OF ENGINEERS<br>ACCIDENT INVESTIGATION REPORT<br>*(For Use of this Form See Help Menu and USACE Suppl to AR 385-40)* | REQUIREMENT CONTROL SYMBOL: CEEC-S-8(R2) |
|---|---|---|---|---|

**1. ACCIDENT CLASSIFICATION**

| PERSONNEL CLASSIFICATION | INJURY/ILLNESS/FATAL | PROPERTY DAMAGE | MOTOR VEHICLE INVOLVED | DIVING |
|---|---|---|---|---|
| GOVERNMENT<br>☐ CIVILIAN ☐ MILITARY | ☐ | ☐ FIRE INVOLVED ☐ OTHER | ☐ | ☐ |
| ☐ CONTRACTOR | ☐ | ☐ FIRE INVOLVED ☐ OTHER | ☐ | ☐ |
| ☐ PUBLIC | ☐ FATAL ☐ OTHER | | ☐ | |

**2. PERSONAL DATA**

| a. Name *(Last, First, MI)* | b. AGE | c. SEX<br>☐ MALE ☐ FEMALE | d. SOCIAL SECURITY NUMBER | e. GRADE |
|---|---|---|---|---|

f. JOB SERIES/TITLE

g. DUTY STATUS AT TIME OF ACCIDENT
☐ ON DUTY ☐ TDY
☐ OFF DUTY

h. EMPLOYMENT STATUS AT TIME OF ACCIDENT
☐ ARMY ACTIVE ☐ ARMY RESERVE ☐ VOLUNTEER
☐ PERMANENT ☐ FOREIGN NATIONAL ☐ SEASONAL
☐ TEMPORARY ☐ STUDENT
☐ OTHER *(Specify)* _____

**3. GENERAL INFORMATION**

a. DATE OF ACCIDENT *(month/day/year)*

b. TIME OF ACCIDENT *(Military time)* hrs

c. EXACT LOCATION OF ACCIDENT

d. CONTRACTOR'S NAME
(1) PRIME:
(2) SUBCONTRACTOR:

e. CONTRACT NUMBER _____
☐ CIVIL WORKS ☐ MILITARY
☐ OTHER *(Specify)* _____

f. TYPE OF CONTRACT
☐ CONSTRUCTION ☐ SERVICE
☐ A/E ☐ DREDGE
☐ OTHER *(Specify)* _____

g. HAZARDOUS/TOXIC WASTE ACTIVITY
☐ SUPERFUND ☐ DERP
☐ IRP ☐ OTHER *(Specify)* _____

**4. CONSTRUCTION ACTIVITIES ONLY** *(Fill in line and corresponding code number in box from list - see help menu)*

a. CONSTRUCTION ACTIVITY _____ (CODE) #

b. TYPE OF CONSTRUCTION EQUIPMENT _____ (CODE) #

**5. INJURY/ILLNESS INFORMATION** *(Include name on line and corresponding code number in box for items e, f & g - see help menu)*

a. SEVERITY OF ILLNESS/INJURY _____ (CODE) #

B. ESTIMATED DAYS LOST

C. ESTIMATED DAYS HOSPITALIZED

D. ESTIMATED DAYS RESTRICTED DUTY

e. BODY PART AFFECTED
PRIMARY _____ (CODE) #
SECONDARY _____ (CODE) #

f. NATURE OF ILLNESS / INJURY _____ (CODE) #

g. TYPE AND SOURCE OF INJURY/ILLNESS
TYPE _____ (CODE) #
SOURCE _____ (CODE) #

**6. PUBLIC FATALITY** *(Fill in line and correspondence code number in box - see help menu)*

a. ACTIVITY AT TIME OF ACCIDENT _____ (CODE) #

b. PERSONAL FLOATATION DEVICE USED?
☐ YES ☐ NO ☐ N/A

**7. MOTOR VEHICLE ACCIDENT**

a. TYPE OF VEHICLE
☐ PICKUP/VAN ☐ AUTOMOBILE
☐ TRUCK ☐ OTHER *(Specify)* _____

b. TYPE OF COLLISION
☐ SIDE SWIPE ☐ HEAD ON ☐ REAR END
☐ BROADSIDE ☐ ROLL OVER ☐ BACKING
☐ OTHER *(Specify)* _____

| c. SEAT BELTS | USED | NOT USED | NOT AVAILABLE |
|---|---|---|---|
| (1) FRONT SEAT | | | |
| (2) REAR SEAT | | | |

**8. PROPERTY/MATERIAL INVOLVED**

| a. NAME OF ITEM | B. OWNERSHIP | C. $ AMOUNT OF DAMAGE |
|---|---|---|
| (1) | | |
| (2) | | |
| (3) | | |

**9. VESSEL/FLOATING PLANT ACCIDENT** *(Fill in line and correspondence code number in box from list - see help menu)*

a. TYPE OF VESSEI/FLOATING PLANT _____ (CODE) #

b. TYPE OF COLLISION/MISHAP _____ (CODE) #

**10. ACCIDENT DESCRIPTION** *(Use additional paper, if necessary)*

See attached page.

## 11. CAUSAL FACTOR(S) *(Read Instruction Before Completing)*

a. (Explain YES answers in item 13)

| | YES | NO |
|---|---|---|
| DESIGN: Was design of facility, workplace or equipment a factor? | ☐ | ☐ |
| INSPECTION/MAINTENANCE: Were inspection & maintenance procedures a factor? | ☐ | ☐ |
| PERSON'S PHYSICAL CONDITION: In your opinion, was the physical condition of the person a factor? | ☐ | ☐ |
| OPERATING PROCEDURES: Were operating procedures a factor? | ☐ | ☐ |
| JOB PRACTICES: Were any job safety/health practices not followed when the accident occurred? | ☐ | ☐ |
| HUMAN FACTORS: Did any human factors such as, size or strength of person, etc., contribute to accident? | ☐ | ☐ |
| ENVIRONMENTAL FACTORS: Did heat, cold, dust, sun, glare, etc., contribute to the accident? | ☐ | ☐ |

a. *(CONTINUED)*

| | YES | NO |
|---|---|---|
| CHEMICAL AND PHYSICAL AGENT FACTORS: Did exposure to chemical agents, such as dust, fumes, mists, vapors or physical agents, such as, noise, radiation, etc., contribute to accident? | ☐ | ☐ |
| OFFICE FACTORS: Did office setting such as, lifting office furniture, carrying, stooping, etc., contribute to the accident? | ☐ | ☐ |
| SUPPORT FACTORS: Were inappropriate tools/resources provided to properly perform the activity/task? | ☐ | ☐ |
| PERSONAL PROTECTIVE EQUIPMENT: Did the improper selection, use or maintenance of personal protective equipment contribute to the accident? | ☐ | ☐ |
| DRUGS/ALCOHOL: In your opinion, was drugs or alcohol a factor to the accident | ☐ | ☐ |

b. WAS A WRITTEN JOB/ACTIVITY HAZARD ANALYSIS COMPLETED FOR TASK BEING PERFORMED AT TIME OF ACCIDENT?

☐ YES *(If yes, attach a copy.)* ☐ NO

## 12. TRAINING

| a. WAS PERSON TRAINED TO PERFORM ACTIVITY/TASK? | b. TYPE OF TRAINING. | c. DATE OF MOST RECENT FORMAL TRAINING. |
|---|---|---|
| ☐ YES ☐ NO | ☐ CLASSROOM ☐ ON JOB | (Month) (Day) (Year) |

## 13. FULLY EXPLAIN WHAT ALLOWED OR CAUSED THE ACCIDENT; INCLUDE DIRECT AND INDIRECT CAUSES *(See instruction for definition of direct and indirect causes.) (Use additional paper, if necessary)*

a. DIRECT CAUSE

See attached page.

b. INDIRECT CAUSE(S)

See attached page.

## 14. ACTION(S) TAKEN, ANTICIPATED OR RECOMMENDED TO ELIMINATE CAUSE(S).

DESCRIBE FULLY:

See attached page.

## 15. DATES FOR ACTIONS IDENTIFIED IN BLOCK 14.

| a. BEGINNING (Month/Day/Year) | b. ANTICIPATED COMPLETION (Month/Day/Year) |
|---|---|
| | |

| c. SIGNATURE AND TITLE OF SUPERVISOR COMPLETING REPORT | d. DATE *(Mo/Da/Yr)* | e. ORGANIZATION IDENTIFIER *(Div, Br, Sect)* | f. OFFICE SYMBOL |
|---|---|---|---|
| CORPS _____<br>CONTRACTOR _____ | | | |

## 16. MANAGEMENT REVIEW *(1st)*

a. ☐ CONCUR b. ☐ NON CONCUR c. COMMENTS

| SIGNATURE | TITLE | DATE |
|---|---|---|
| | | |

## 17. MANAGEMENT REVIEW *(2nd - Chief Operations, Construction, Engineering, etc.)*

a. ☐ CONCUR b. ☐ NON CONCUR c. COMMENTS

| SIGNATURE | TITLE | DATE |
|---|---|---|
| | | |

## 18. SAFETY AND OCCUPATIONAL HEALTH OFFICE REVIEW

a. ☐ CONCUR b. ☐ NON CONCUR c. ADDITIONAL ACTIONS/COMMENTS

| SIGNATURE | TITLE | DATE |
|---|---|---|
| | | |

## 19. COMMAND APPROVAL

COMMENTS

| COMMANDER SIGNATURE | DATE |
|---|---|
| | |



*U.S. GOVERNMENT PRINTING OFFICE:

| 10. ACCIDENT DESCRIPTION *(Continuation)* |
| --- |
| |

| 13a. DIRECT CAUSE *(Continuation)* |
| --- |
| |

| 13b. INDIRECT CAUSES *(Continuation)* |
| --- |
| |

| 14. ACTION(S) TAKEN, ANTICIPATED, OR RECOMMENDED TO ELIMINATE CAUSE(S) *(Continuation)* |
| --- |
| |

| TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE *(Read instructions on the reverse side prior to initiating this form)* | DATE | TRANSMITTAL NO. |
|---|---|---|

## SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

| TO: | FROM: | CONTRACT NO. | CHECK ONE: ☐ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL _____ |
|---|---|---|---|
| SPECIFICATION SEC. NO. *(Cover only one section with each transmittal)* | PROJECT TITLE AND LOCATION | | CHECK ONE: THIS TRANSMITTAL IS FOR ☐ FIO ☐ GOV'T. APPROVAL |

| ITEM NO. *a.* | DESCRIPTION OF ITEM SUBMITTED *(Type size, model number/etc.)* *b.* | MFG OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. *(See instruction no. 8)* *c.* | NO. OF COPIES *d.* | CONTRACT REFERENCE DOCUMENT | | FOR CONTRACTOR USE CODE *g.* | VARIATION *(See instruction No. 6)* *h.* | FOR CE USE CODE *i.* |
|---|---|---|---|---|---|---|---|---|
| | | | | SPEC. PARA. NO. *e.* | DRAWING SHEET NO. *f.* | | | |
| | | | | | | | | |
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| | | | | | | | | |

| REMARKS | I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated.<br><br>NAME AND SIGNATURE OF CONTRACTOR |
|---|---|

## SECTION II - APPROVAL ACTION

| ENCLOSURES RETURNED *(List by Item No.)* | NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY | DATE |
|---|---|---|
| | | |

# INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.

2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmittals mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.

3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.

4. Submittals requiring expeditious handling will be submitted on a separate form.

5. Separate transmittal form will be used for submittals under separate sections of the specifications.

6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".

7. Form is self-transmittal, letter of transmittal is not required.

8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.

9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

## THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

A -- Approved as submitted.

B -- Approved, except as noted on drawings.

C -- Approved, except as noted on drawings.
Refer to attached sheet resubmission required.

D -- Will be returned by separate correspondence.

E -- Disapproved (See attached).

F -- Receipt acknowledged.

FX -- Receipt acknowledged, does not comply as noted with contract requirements.

G -- Other *(Specify)*

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

*(Reverse of ENG Form 4025-R)*

Approved by OM 0348-0046

# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**

☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**

☐ a. initial filing
b. material change

**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**

☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

**CFDA Number,** *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:

$

**10. a. Name and Address of Lobbying Entity**
(*if individual, last name, first name, MI):*

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

**11. Amount of Payment** *(check all that apply)*:

$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:

☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16. Information requested through this form is authorized by title 31 U.S.C section 1352. This disclosure of lobbyig activities is a materia representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352 . This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to**

**Signature:** _____

**Print Name:** _____

**Title:** _____

**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks “Subawardee”, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “RFP-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individuals(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

    Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

# DISCLOSURE OF LOBBYING ACTIVITIES
# CONTINUATION SHEET

Approved by OM
0348-0046

Reporting Entity: _____ Page ____ of ____ ____

*U.S. G.P.O. 1990-260-708:00012

SIGHTING INFORMATION

DATE AND LOCAL TIME _____

WEATHER CONDITIONS _____

OCEANOGRAPHIC CONDITIONS _____

_____

LOCATION _____

_____

SPECIES _____ RELIABILITY OF I.D. (SURE, UNSURE) _____

FOLD HERE

NUMBER OF ANIMALS _____

ASSOCIATED ORGANISMS _____

CHARACTERISTICS OBSERVED WHICH RESULTED IN SPECIES IDENTIFICATION _____

_____

_____

BEHAVIOR OF ANIMALS(S) _____

_____

_____

PHOTOS AVAILABLE YES _____ NO _____

FOLD HERE

U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF COMMERCE
COM-210

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

Department of Commerce, NOAA
National Marine Fisheries Service
9450 Koger Boulevard
St. Petersburg, FL 33702

Attention: F/SEP23

NOAA FORM 61-324 (11-79)
See NOAA 61-10 for Class of Postal Service

FOLD HERE

ADDITIONAL REMARKS _____

_____

_____

NAME AND ADDRESS OF OBSERVER (SHIP OR A/C) _____

_____

_____

_____

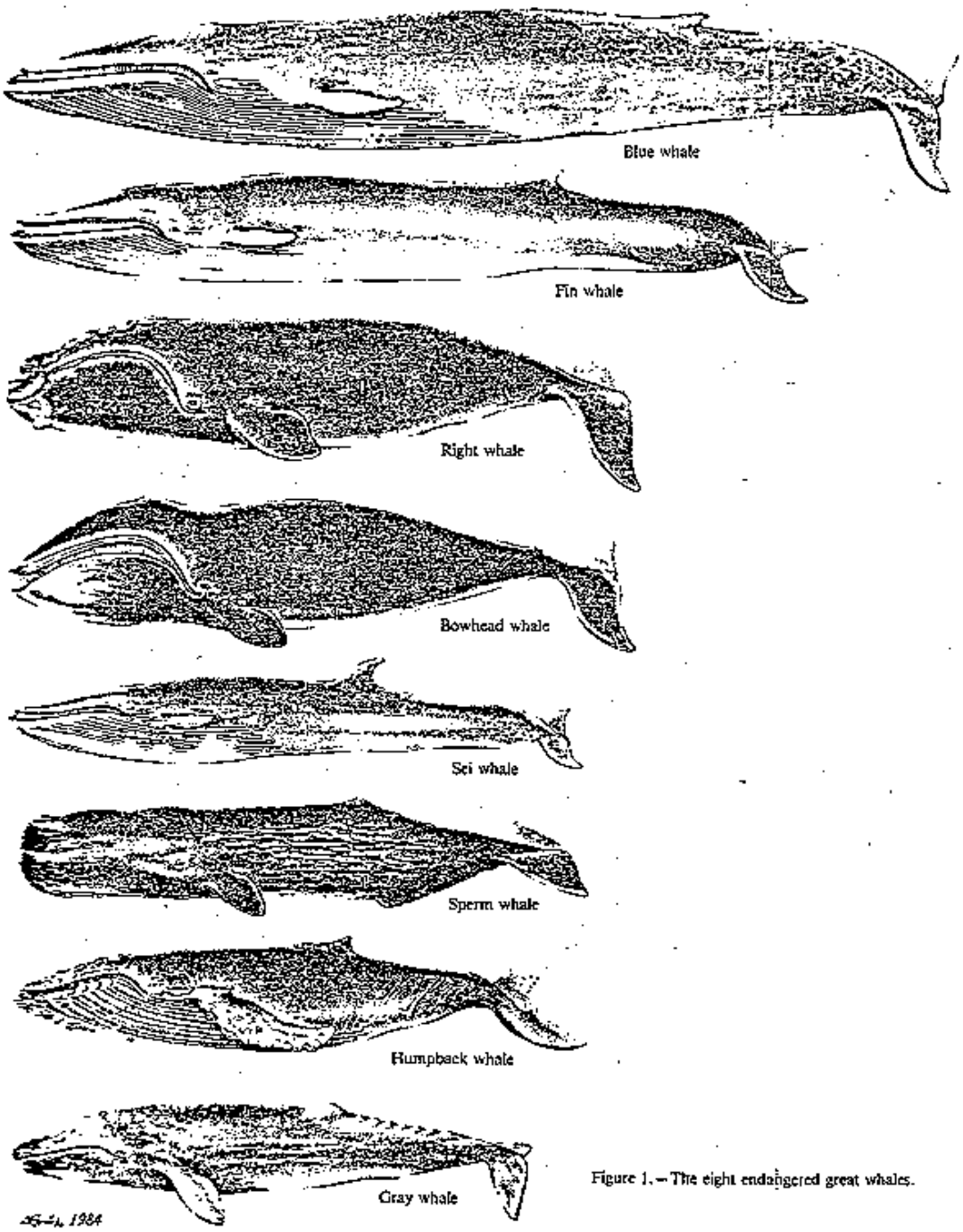
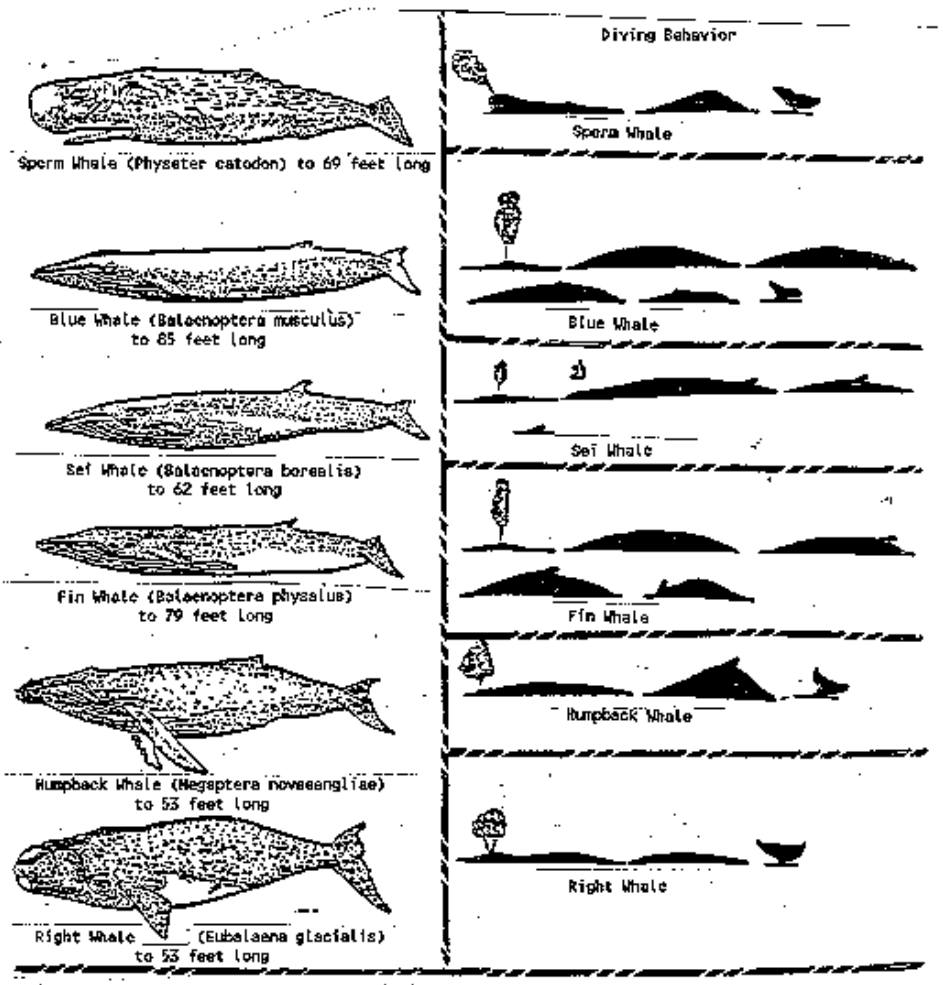



Figure 1.—The eight endangered great whales.

IDENTIFICATION GUIDE




DESCRIPTIONS

Sperm: Teeth in lower jaw; hump and ridges instead of dorsal fin; single blowhole to left of midline; large blunt head comprising 1/4 to 1/3 of total body; color bluish black.

Blue: Broad flat U-shaped head with single ridge from in front of paired blowholes almost to tip of snout; very small dorsal fin (13 inches tall); color bluish and often mottled.

Sei: Differs from other baleens by the very fine bristles (baleen); color dark steel gray on back and sides; often has a shiny or galvanized appearance due to ovoid scars.

Fin: Dorsal fin up to 24 inches tall located slightly more than 1/3 forward from tail; black on right side of lower jaw and white on the left; color dark gray to brownish gray.

Humpback: Long nearly white flippers; lumpy dorsal fin; protuberances randomly distributed on the top of the head and lower jaw; distinctive patterns on flukes; color black with white region on belly.

Right: Rotund body without dorsal fin; distinctive bumps (callosities) on top of head; color black, brown or mottled with white region on chin and belly.

Whenever possible take photographs of your sightings. For right whales, photographs of the callosities on the snout are important because they allow individuals to be identified. Photographs of the flukes of humpback whales also allow individuals to be identified. For questions please call (813) 893-3366.

TURTLE OBSERVATION REPORTING LOG

PROJECT: _____

TURTLE OBSERVER NOTES

LOAD NUMBER: _____ DATE: _____ TIME: _____

LOCATION IN CHANNEL: LATITUTE _____ LONGITUDE: _____

WEATHER CONDITIONS: _____

PORT BASKET CONTENTS: _____

_____

_____

_____

_____

STARBOARD BASKET CONTENTS: _____

_____

_____

_____

_____

TURTLE OR TURTLE PARTS PRESENT: YES _____ NO _____

COMMENTS AND OTHER OBSERVATIONS: _____

_____

_____

_____

_____

BRIDGE WATCH: TIME _____ LOCATION _____

NUMBER OF TURTLES SIGHTED: _____

_____

OBSERVER'S NAME

TURTLE OBSERVATION REPORTING LOG (CONTINUED)

PROJECT: _____

INCIDENT REPORT OF SEA TURTLE MORTALITY AND DREDGING ACTIVITIES

PROJECT: _____

SPECIES: _____ DATE: _____ TIME: 24-HOUR CLOCK _____

GRAPHIC SITE: _____

LOCATION: LATITUDE _____ LONGITUDE _____

VESSEL NAME: _____

TYPE OF DREDGING ACTIVITY: _____

LOAD NUMBER: _____

SAMPLING METHOD: _____

LOCATION SPECIMEN RECOVERED: _____

DRAGHEAD DEFLECTOR? YES _____ NO _____

CONDITION OF DEFLECTOR: _____

WEATHER CONDITIONS: _____

WATER TEMPERATURE: SURFACE _____ COLUMN _____

HEAD WIDTH: _____

PLASTRON LENGTH: _____

CARAPACE S.L. LENGTH: _____

CARAPACE S.L. WIDTH: _____

CARAPACE O.C. LENGTH: _____

CARAPACE O.C. WIDTH: _____

CONDITION OF SPECIMEN: _____

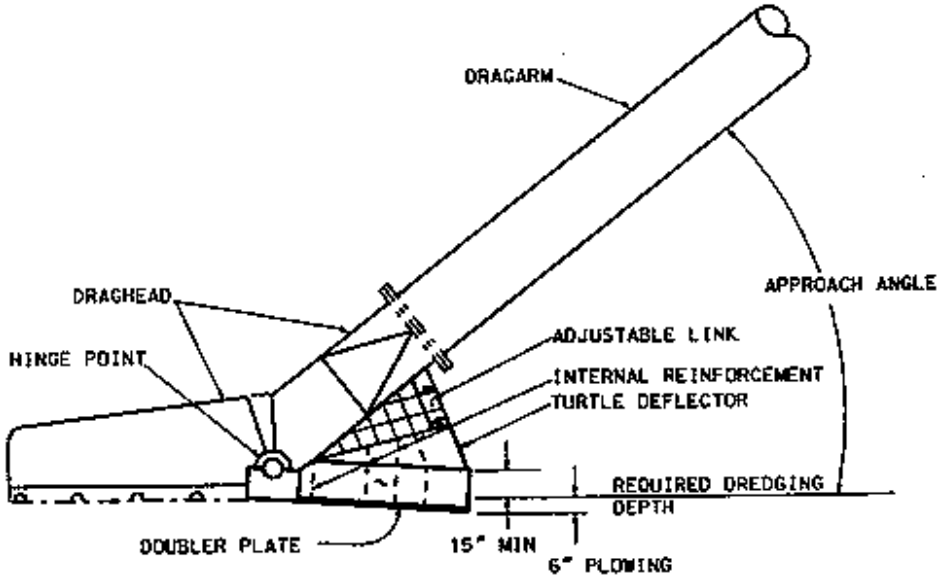
TURTLE TAGGED: YES __ NO __ TAG NO.: _____ TAG DATE: _____

COMMENTS/OTHER: _____

_____

OBSERVER'S NAME: _____

SKETCH SHEET

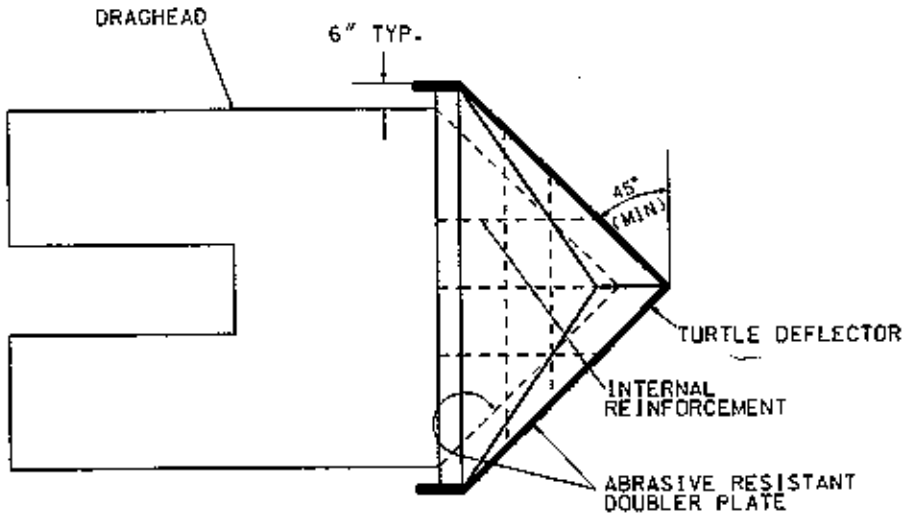



ELEVATION

RIGID ADJUSTABLE TURTLE DEFLECTOR
SCALE:NONE

| | | |
|---|---|---|
| | HOPPER DREDGE EQUIPMENT | FIGURE 2 |
| | SOLICITATION NO. | DATE: |

SKETCH SHEET




PLAN VIEW

RIGID TURTLE DEFLECTOR

SCALE: NONE

| | | |
|---|---|---|
| | HOPPER DREDGE EQUIPMENT | FIGURE 3 |
| | SOLICITATION NO. | DATE: |

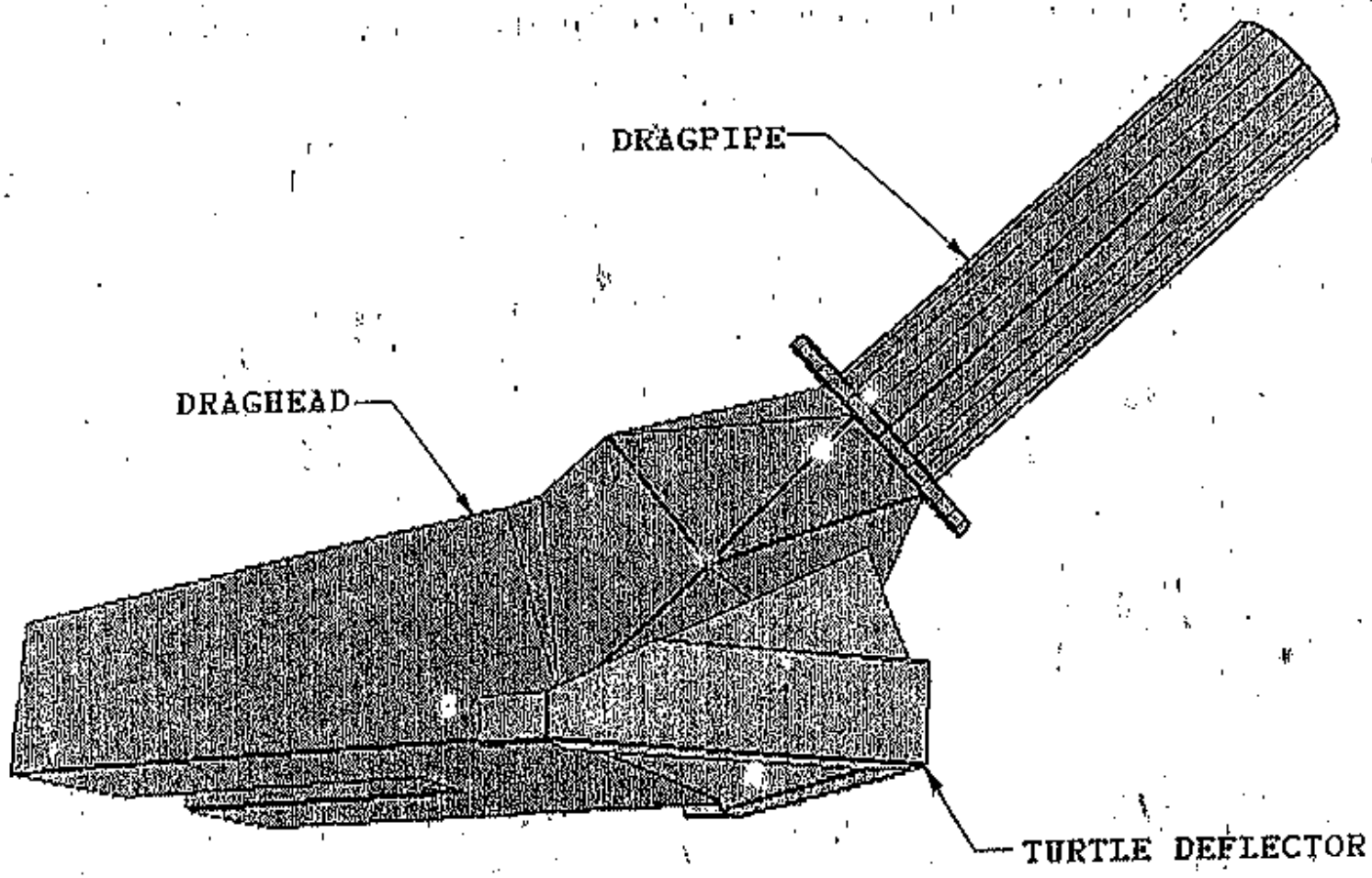



FIGURE 4

ENDANGERED SPECIES OBSERVER PROGRAM

# LOAD DATA FORM

**USACE DISTRICT:** _____

**CONTRACT #:** _____ **Maintenance**____/**New Work** _____ **PROJECT start date** _____

**PROJECT NAME:** _____ **DREDGE NAME:** _____

**DREDGE FIRM:** _____

**LOAD #:** _____ **LOAD start date:** _____ **Times (24hrs): Start** _____ **End** _____

**Condition of screening : Port**_____ **Starboard** _____ **Overflow** _____

**Number of dragheads in use:** _____ **Type of dragheads used:** _____**Size of dragheads:** _____

**Draghead deflector? YES** ____ **NO** ____ **Condition of deflector:** _____

**Type of material dredged:** _____

**Weather conditions:** _____

_____

**Tidal stage (CIRCLE ONE): Slack Rising High Falling Low Unknown**

**<u>Beaufort Sea States (Winds/Wave Height)</u> (CIRCLE ONE)**

| | | | | |
|---|---|---|---|---|
| **0** = <1 knot/ 0 ft | **3** = 7-10 knot/ 2 ft | **6** = 22-27 knot/10 ft | **9** = 41-47 knot/23 ft | **12** = >63 knot/45 |
| **1** = 1- 3 knot/ 0.25 ft | **4** = 11-16 knot/ 4 ft | **7** = 28-33 knot/14 ft | **10** = 48-55 knot/29 ft | |
| **2** = 4- 6 knot/ 0.5 ft | **5** = 17-21 knot/ 6 ft | **8** = 34-40 knot/18 ft | **11** = 56-63 knot/37 ft | |

**Waves:** _____ **ft Wind (speed & direction):** _____

**AIR TEMP:** _____ **$^{o}$C/$^{o}$F** **($^{o}$F = 9/5 ($^{o}$C) + 32; $^{o}$C = 5/9 ($^{o}$F - 32))**

**WATER TEMP: Surface** _____ **$^{o}$C /$^{o}$F Column (mid-depth)** _____ **$^{o}$C /$^{o}$F Bottom** _____ **$^{o}$C /$^{o}$F**

| **SCREEN TYPE** | | | | | | |
|---|---|---|---|---|---|---|
| | _____ | **Inflow screening:** | **None** | **25%** | **50%** | **75%** | **100%** |
| | _____ | **Overflow screening:** | **None** | **25%** | **50%** | **75%** | **100%** |
| | _____ | **Other screening:** | **None** | **25%** | **50%** | **75%** | **100%** |

**PORT SCREEN CONTENTS:** _____

_____

_____

**STARBOARD SCREEN CONTENTS:** _____

_____

_____

**Estimate number entrained on this load for the following:**

**Sturgeon (any species)** _____

**Shark (any species)** _____

**Horseshoe crab** _____

**Blue crab** _____

**TURTLE OR TURTLE PARTS PRESENT THIS LOAD: YES** _____ **NO** _____

**SPECIES OF TURTLE TAKE: <u>Unknown</u> <u>Loggerhead</u> <u>Green</u> <u>Kemp's ridley</u> <u>Hawksbill</u> <u>Leatherback</u>**

**Comments:** _____

_____

**Number observers used/24hrs:** _____ **% Monitoring/24 hrs: None 25% 50% 75% 100%**

**Observer's name:** _____ **Observer firm**_____

**Observer signature** _____

ENDANGERED SPECIES OBSERVER PROGRAM

# DAILY REPORT

**USACE DISTRICT:** _____

**PROJECT NAME:** _____ **DREDGE NAME:** _____

**Date:** _____ **Load #s:** _____ **Areas dredge worked:** _____

**Beaufort Sea State:** 0 1 2 3 4 5 6 7 8 9 10 11 12

**AIR TEMP:** _____ $^{o}$C/$^{o}$F ($^{o}$F = 9/5 ($^{o}$C) + 32; $^{o}$C = 5/9 ($^{o}$F - 32))

**WATER TEMP: Surface** _____ $^{o}$C /$^{o}$F **Column (mid-depth)** _____ $^{o}$C /$^{o}$F **Bottom** _____ $^{o}$C /$^{o}$F

**Condition of deflector:**_____ **Condition of screening:** _____

**Were there incidents involving endangered or protected species?** **YES** ____ **NO** ____

**Which species? (complete incident form(s))**_____

**Comments (type of material, biological specimens, unusual circumstances, etc):** _____

## BRIDGE WATCH SUMMARY

| Time | Species | # Sightings/# Animals | Location/Comments |
|---|---|---|---|
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**Observer name** _____

**ENDANGERED SPECIES OBSERVER PROGRAM**

# WEEKLY SUMMARY

**USACE DISTRICT:** _____

**PROJECT NAME:** _____ **DREDGE NAME:** _____

**Dates:** _____ - _____ **Load #s:** _____

**Areas dredge worked:** _____

**Were there incidents involving endangered or protected species?** **YES** ____ **NO** ____

**Which species?** _____

**Comments:** _____

## BRIDGE WATCH SUMMARY

| Date/Time | Species | # Sightings/# Animals | Location/Comments |
|---|---|---|---|
| | | / | |
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**Observer name** _____

ENDANGERED SPECIES OBSERVER PROGRAM

# SEA TURTLE INCIDENTAL TAKE DATA FORM

**USACE DISTRICT:**_____
**PROJECT NAME:** _____ **DREDGE NAME:** _____

**DATE:** _____ **Time turtle take recovered (24hr):** _____ **Turtle take # for project:** _____

**LOAD #:** _____ **Times (24hrs): Start** _____ **End** _____ **Load start date** _____

**SPECIES OF TURTLE TAKE:** **Unknown** **Loggerhead** **Green** **Kemp's ridley** **Hawksbill** **Leatherback**

**Channel location of take: Latitude** _____ **Longitude** _____
**Other location / Channel description (e.g. buoy markers, landmarks):**_____
_____

**Location take recovered on dredge:**_____

**Number of dragheads in use at time of incident:** _____ **Draghead deflector? YES** ____ **NO** ____
**Condition of deflector:**_____ **Condition of screening:** _____

**Beaufort Sea State: 0 1 2 3 4 5 6 7 8 9 10 11 12**

**AIR TEMP:** _____ **$^{o}$C/$^{o}$F** **($^{o}$F = 9/5 ($^{o}$C) + 32; $^{o}$C = 5/9 ($^{o}$F - 32))**
**WATER TEMP: Surface** _____ **$^{o}$C /$^{o}$F Column (mid-depth)** _____ **$^{o}$C /$^{o}$F Bottom** _____ **$^{o}$C /$^{o}$F**

**Condition of specimen:** _____
_____
_____
**0 = Alive; 1 = Fresh dead; 2 = Moderately decomposed; 3 = Severely decomposed; 4 = skeleton/old bone; 5 = undetermined**

**Sex: M F UN How determined?**_____ **Age class: Juv** ___ **Sub-Adult** ___ **Adult** ___ **UN** ___

***Measurements:*** ***Circle units***

| | | | |
|---|---|---|---|
| | | **Head Width:** | _____ **cm/in** |
| **Plastron Length:** | _____ **cm/in** | **Plastron Width:** | _____ **cm/in** |
| **Carapace Straight Length:** | _____ **cm/in** | **Carapace Straight Width:** | _____ **cm/in** |
| **Carapace Curved Length:** | _____ **cm/in** | **Carapace Curved Width:** | _____ **cm/in** |

**Measurement/description of part:**_____

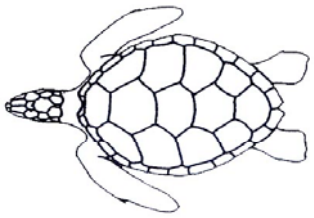
**Genetic samples taken: YES** ____ **NO** ____ **Photos taken: YES** ____ **NO** ____
**Turtle tagged?: YES** ____ **NO** ____ **Tag type:**_____ **Tag #:** _____ **Tag date:** _____
**Final disposition of specimen:** _____

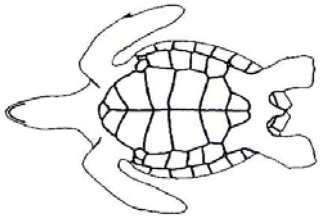
**Comments:** _____
_____
_____

**Load data form attached: YES** ____**NO** ____ **Dredge load log attached: YES** ____**NO** ____

**Observer's name** _____

**Use diagrams below to illustrate specimen/part recovered:**





# Kemp's Ridley (*Lepidochelys kempii)*

Shade areas of turtle that are missing; sketch cracks and lacerations

Comments: _____

_____

_____

_____

_____

_____

_____

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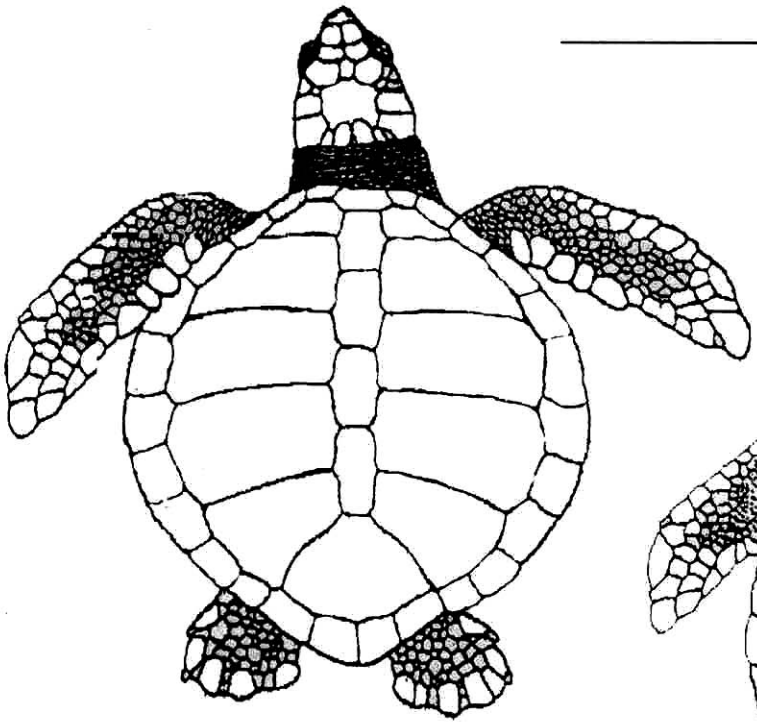

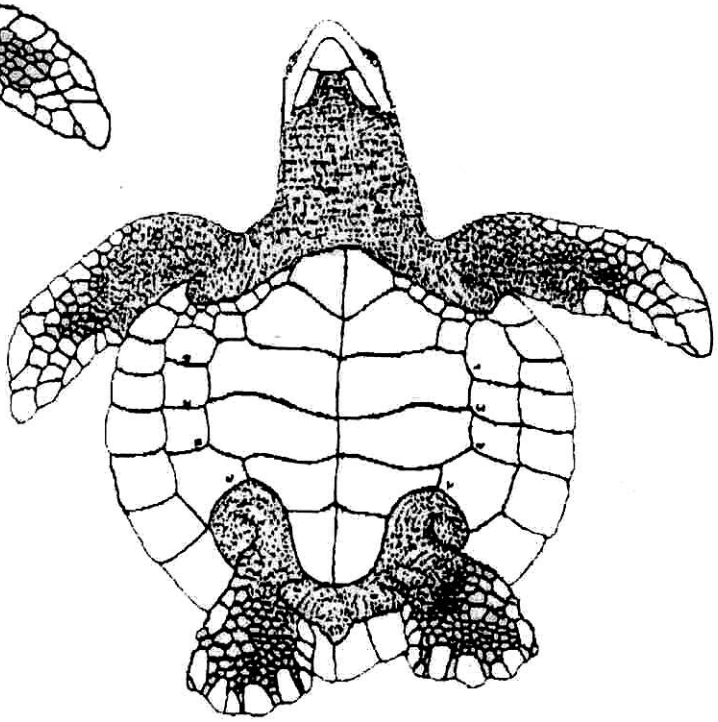

Diagrams by Tom McFarland

# Green turtle (*Chelonia mydas)*

Shade areas of turtle that are missing; sketch cracks and lacerations

Comments: _____

_____

_____

_____

_____

_____

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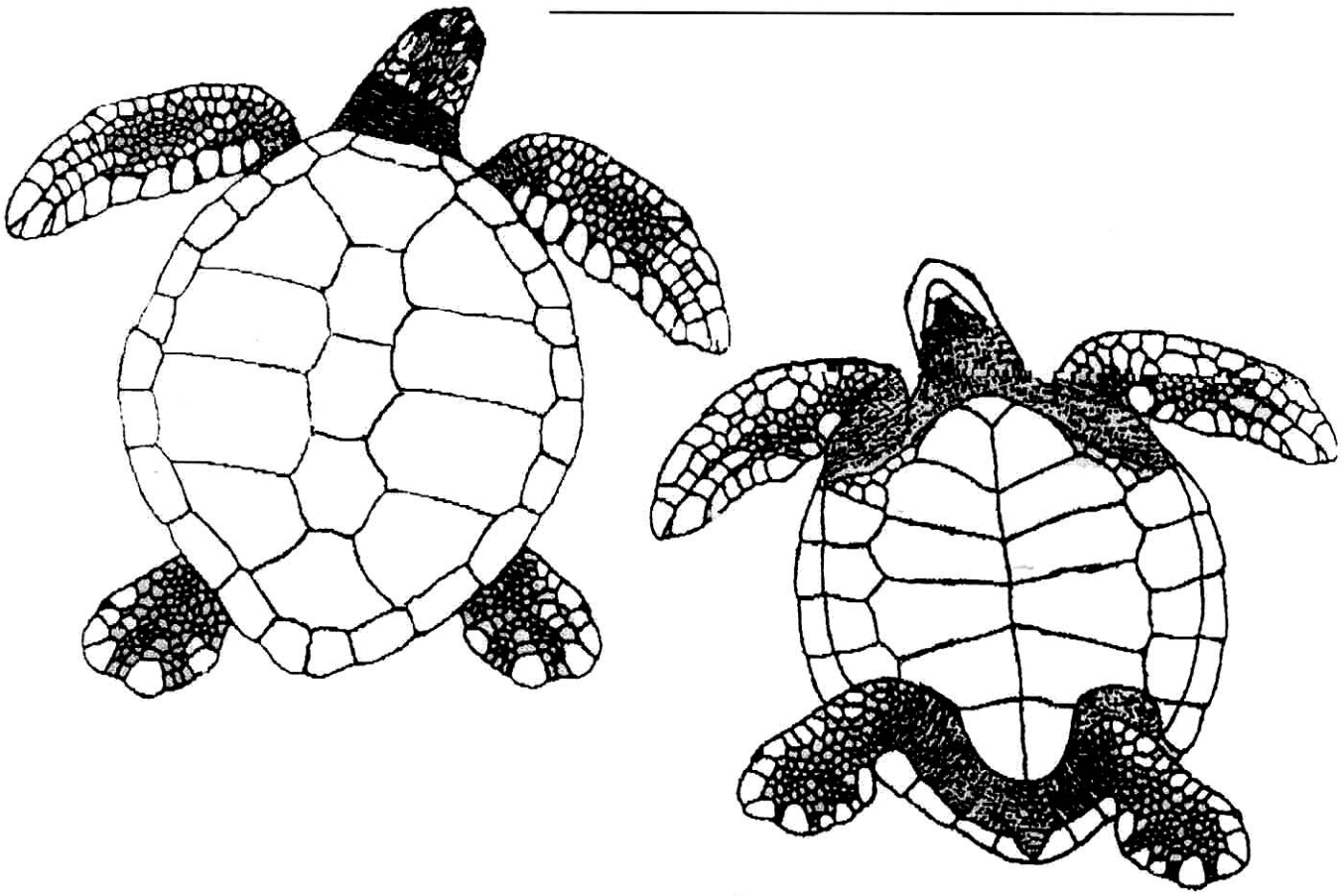
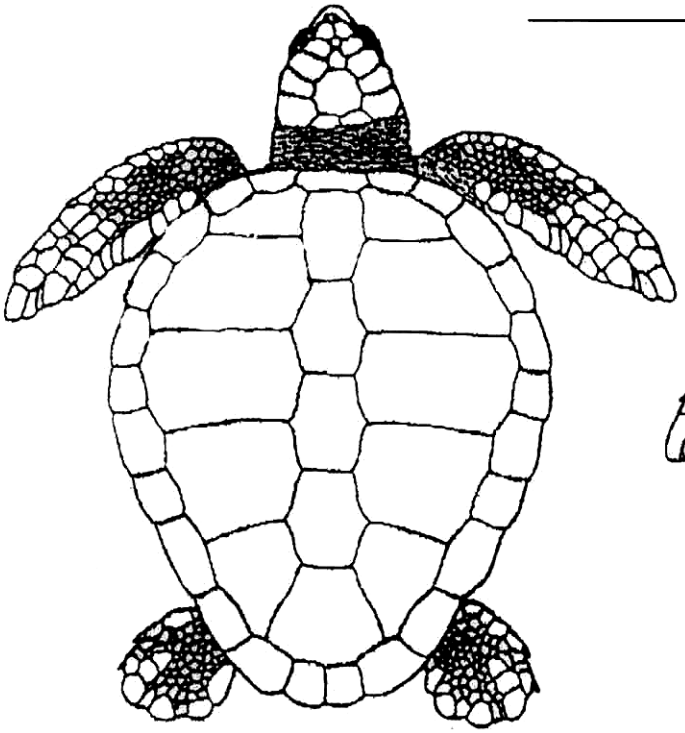


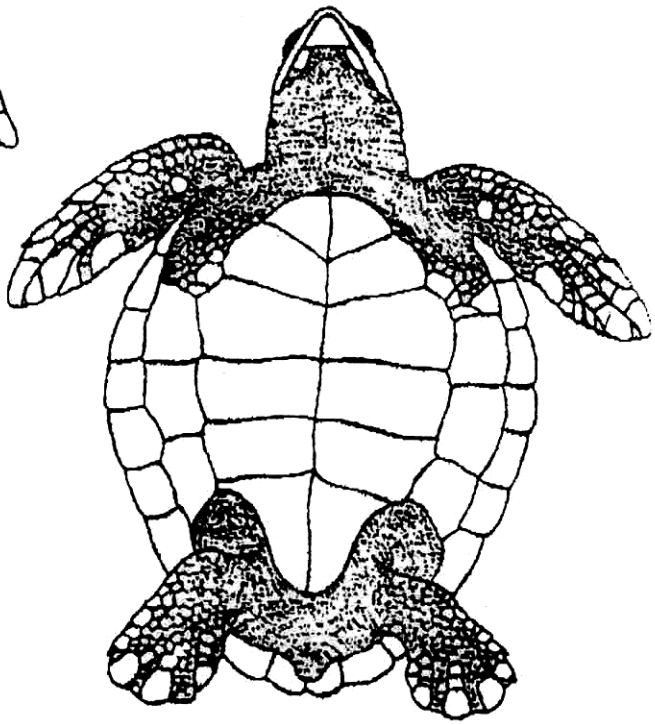
Diagrams by Tom McFarland

# Loggerhead (*Caretta caretta)*

Shade areas of turtle that are missing; sketch cracks and lacerations

Comments: _____



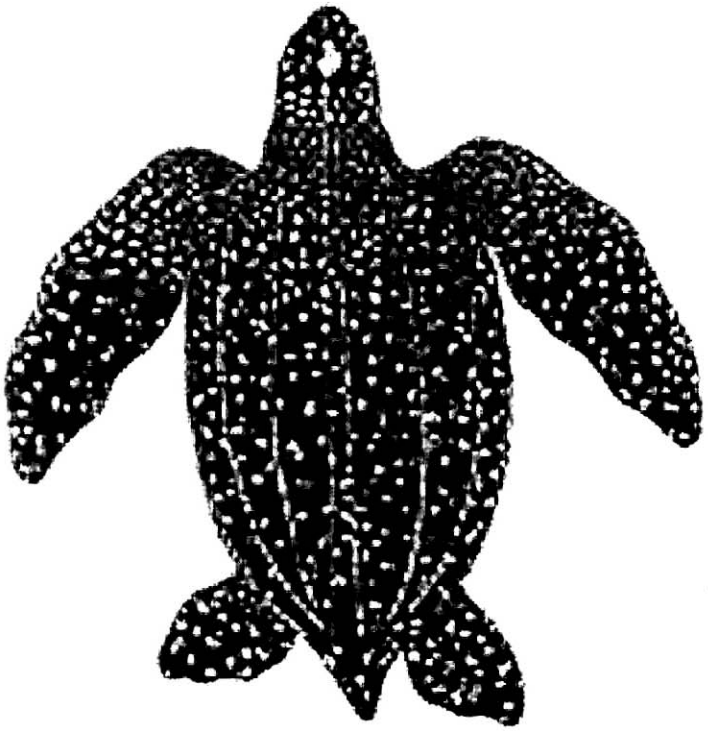


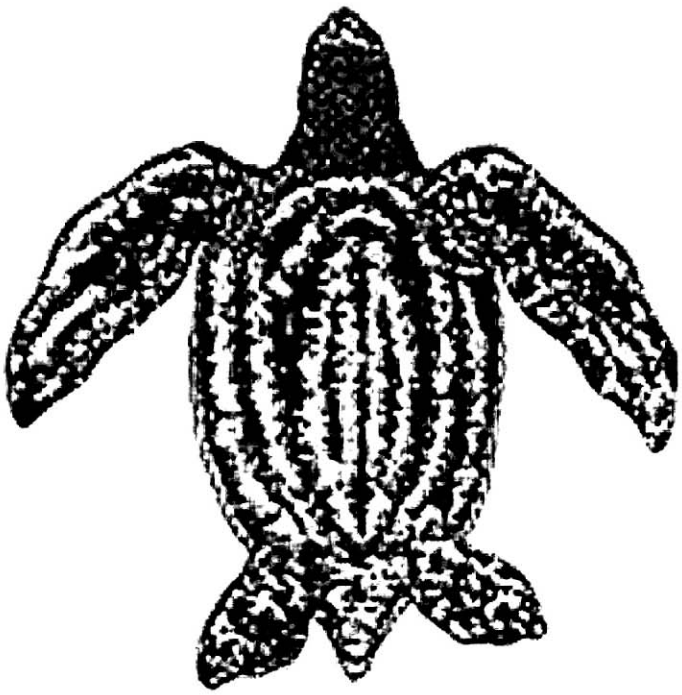
Diagrams by Tom McFarland

# Leatherback (*Dermochelys coriacea)*

Shade areas of turtle that are missing; sketch cracks and lacerations

Comments: _____





Diagrams by Tom McFarland

ENDANGERED SPECIES OBSERVER PROGRAM

# STURGEON INCIDENTAL TAKE DATA FORM

**USACE DISTRICT:** _____

**PROJECT NAME:** _____ **DREDGE NAME:** _____

**DATE:** _____ **Time sturgeon take recovered (24hr):** _____ **Sturgeon # for project:** _____

**LOAD #:** _____ **Times (24hrs): Start** _____ **End** _____ **Load start date** _____

**SPECIES OF STURGEON TAKE: Shortnose** _____ **Gulf** _____ **Other** _____ **Unknown** _____

**Channel location of take: Latitude** _____ **Longitude** _____

**Other location / Channel description (e.g. buoy markers, landmarks):**_____

_____

**Location take recovered on dredge:**_____

**Number of dragheads in use at time of incident:** _____ **Draghead deflector? YES** ____ **NO** ____

**Condition of deflector:**_____ **Condition of screening:** _____

**Beaufort Sea State: 0 1 2 3 4 5 6 7 8 9 10 11 12**

**AIR TEMP:** _____ **$^{o}$C/$^{o}$F** **($^{o}$F = 9/5 ($^{o}$C) + 32; $^{o}$C = 5/9 ($^{o}$F - 32))**

**WATER TEMP: Surface** _____ **$^{o}$C /$^{o}$F Column (mid-depth)** _____ **$^{o}$C /$^{o}$F Bottom** _____ **$^{o}$C /$^{o}$F**

**Condition of specimen:** _____

_____

_____

**0 = Alive; 1 = Fresh dead; 2 = Moderately decomposed; 3 = Severely decomposed; 4 = skeleton/old bone; 5 = undetermined**

**Measurements/description of specimen:**_____

_____

_____

**Genetic samples taken: YES** ____ **NO** ____ **Photos taken: YES** ____ **NO** ____

**Sample frozen/preserved: YES** ____ **NO** ____

**Final disposition of specimen:** _____

**Comments:** _____

_____

_____

_____

**Load data form attached: YES** ____**NO** ____ **Dredge load log attached: YES** ____**NO** ____

**Observer's name** _____

**Use diagram below to illustrate specimen/part recovered:**

**ENDANGERD SPECIES OBSERVER PROGRAM**
**Large Whale Observation Data**
**(Append to Daily Report)**

**Vessel**_____

**Project** _____

**Date**_____/_____/_____

Load # _____ Times: Start _____ End _____ Dump _____
Location(lat/long) _____ X _____ Beau Sea State _____
Wind Direction _____ Speed _____ Cloud Cover(%) _____ $H_2O$ Surf. Temp _____

Start Sighting Time_____ Vessel location (lat/long) _____ X _____
Magnetic bearing to sighting _____ Estimated distance _____
Species observed _____ # of animals _____
Vessel's heading _____ Animal's heading _____

Estimated length of whale(s)_____
Coloration_____
Fins or flippers observed_____
Behaviors observed_____
Surfacing intervals (time and distance) _____

End Sighting Time_____ Vessel location (lat/long) _____ X _____
Duration of observation _____

Comments (was whale's behavior effected by vessel? how far and in what direction did whale(s) move during observation? who was notified?)

_____
_____
_____
_____
_____
_____
_____
_____
_____

Observers on Duty: _____

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

SEP 25 1997

R. L. VanAntwerp
Brigadier General, U.S. Army
Division Engineer
South Atlantic Division, Corps of Engineers
Room 313, 77 Forshyth St., S.W.
Atlanta, Georgia 30355-6801

Dear Brigadier General VanAntwerp;

Enclosed is the regional biological opinion concerning the use of hopper dredges in channels and borrow areas along the Southeast U.S. Atlantic coast. This biological opinion amends the regional opinion conducted in 1995, and supersedes the interim biological opinion issued on April 9, 1997. The opinion recognizes the efforts of the Corps of Engineer's (COE) South Atlantic Division (SAD) to minimize sea turtle takes through application of new technology such as draghead deflectors, seasonal dredging windows, termination of projects in which high rates of turtle takes are observed, and elevated staff effort to identify and resolve site-specific problems. Despite these major efforts and continuing plans by the COE to improve the effectiveness of the rigid draghead deflector and to resolve dredging schedules to reduce the likelihood of sea turtle interactions, NMFS believes that further sea turtle takes are likely in future years. However, we believe that these takes are not likely to jeopardize the continued existence of any species. An annual incidental take, by injury or mortality of 35 loggerheads 7 Kemp's ridleys, 7 green turtles, 2 hawksbills, and 5 shortnose sturgeon is listed in the incidental take statement appended to the enclosed opinion. This annual take level can be monitored over fiscal years to be consistent with project contracts.

I appreciate your continued commitment to reduce sea turtle takes associated with dredging in your Division. COE Division and District staff have facilitated the excellent working relationship that exists between our offices within the SAD. We look forward to continuing these cooperative efforts in sea turtle conservation.

Sincerely,

for Hilda Diaz-Soltero
Office Director
Office of Protected Resources

# Endangered Species Act - Section 7 Consultation

## Biological Opinion

**Agency:** U.S. Army Corps of Engineers, South Atlantic Division

**Activity:** The continued hopper dredging of channels and borrow areas in the southeastern United States

**Consultation Conducted By:** National Marine Fisheries Service, Southeast Regional Office

**Date Issued:** September 25, 1997

**Background**

Hopper dredging in channels and borrow areas along the southeastern coast of the United States during the spring of 1997 resulted in an unanticipated high rate of loggerhead turtle take. The number of takes quickly approached the incidental take level established in the regional biological opinion (BO) issued to the Army Corps of Engineers (COE) on August 25, 1995. A formal consultation considering the take rates as well as the dredging locations and conditions was conducted and an interim biological opinion (IBO) was issued on April 9, 1997 and is incorporated herein by reference. The IBO concluded that continued hopper dredging during the 1997 fiscal year was likely to take additional sea turtles but was not likely to jeopardize the continued existence of any species. The incidental take, by injury or mortality, of seven (7) documented Kemp's ridleys, seven (7) green turtles, two (2) hawksbills, sixteen (16) loggerhead turtles, and five (5) shortnose sturgeon was set pursuant in the IBO. This modification added 15 loggerheads to the annual incidental take level, bringing the 1997 fiscal year total incidental take level to 35 loggerheads.

The history of Endangered Species Act (ESA) Section 7 consultations on the deployment of hopper dredges to maintain the depths of southeastern channels is discussed in the August 25, 1995 BO and is incorporated herein by reference. Although no endangered sea turtles have been taken in any channel dredging projects during the 1997 fiscal year, 28 loggerheads have been taken, including 9 loggerheads taken subsequent to the issuance of the IBO (Table 1).

During 1997, the COE responded to high rates of sea turtle takes by assessing each dredging project, modifying draghead deflectors when apparently necessary, conducting relative abundance surveys and relocation trawling, and ultimately ending a number of projects prior to completion (Kings Bay, Brunswick Harbor, Savannah Harbor, Morehead City).

**1991 Biological Opinion**

Two hundred twenty-five sea turtle takes, including 22 live turtles, were documented between 1980 and 1990 in the Southeast channels despite limited observer coverage in most channels throughout most of that decade (Table 2a.). Seventy-one of these turtles were taken in four months of dredging in the Canaveral ship channel in 1980, the first year in which observers were required. Twenty-one were observed in over two years of dredging in the Kings Bay Channel in 1987-1989, after observers were first deployed on dredges in that channel. Observers were required on most hopper dredges after 1989. Documented takes of turtles on dredges in Brunswick and other Southeast U.S. channels indicated that sea turtles were vulnerable to hopper dredges in all southeastern channels during warmer months. These observations resulted in the Section 7 consultation that concluded with a BO issued on November 25, 1991.

The November 1991 BO was the first cumulative area consultation between NMFS and COE's South Atlantic Division (SAD) regarding hopper dredging. The BO considered hopper dredging in channels from the Canaveral in Florida through Oregon Inlet, North Carolina. The 1991 BO concluded that continued unrestricted hopper dredging in Southeast U.S. channels could jeopardize the continued existence of listed sea turtles. The Opinion established a reasonable and prudent alternative to unrestricted hopper dredging which prohibited the use of a hopper dredge in the Canaveral ship channel, and from April 1 through November 30 in other southeastern channels north of Canaveral. An incidental take level was established based on assumptions that takes would be significantly reduced due to limited dredging windows, but that water temperatures in some years would result in turtle presence in channels during December and March. Observers were required on dredges equipped with outflow and/or inflow screening in March and December. The presence or absence of turtles in December would determine the further need for observer coverage into January. The documented incidental take of a total of five (5) Kemp's ridley, green, hawksbill or leatherback turtle mortalities in any combination of which no more than two (2) are Kemp's ridley, or fifty (50) loggerhead turtle mortalities was set. The Opinion anticipated that seasonal restrictions on hopper dredging would be adjusted on a channel-by-channel basis as better information on turtle occurrence was collected.

Additionally, the development and testing of a draghead deflector was promoted.

**1995 Biological Opinion**

Between 1992 and 1995, only 16 sea turtle takes were documented (Table 2b.), including three that were alive when collected during dredging operations in the SAD under the dredging windows established in the November 1991 BO (see above). During that period COE developed a rigid draghead deflector that appeared to be effective during videotaped dredging trials using mock turtles, as well as during experimental dredging associated with trawling in the Canaveral Channel. COE also completed a study of six Southeast channels to determine seasonal abundance and spatial distribution of these turtles. A discussion of the findings can be found in the COE report entitled "Assessment of Sea Turtle Abundance in Six South Atlantic U.S. Channels" (Dickerson et al. 1994), summarized in the 1995 BO. Based on the new information, COE requested expanded dredging windows and observer requirements. NMFS considered their request and developed alternative dredging windows and observer requirements and added requirements for the use of hopper dredges in borrow areas along the east coast.

After 1995, COE districts within the SAD generally required observers in some channels, such as Kings Bay, throughout the winter, beyond the new monitoring windows. SAD hopper dredge projects were initially conducted in the middle of the dredging windows, when nearshore waters were cool. During 1996, only nine sea turtle takes, including one green turtle and eight loggerheads, were documented (Table 2c.). No more than three takes occurred in any project. The new dredging windows and draghead deflector requirements appeared to provide good protection to sea turtles.

Hopper dredging operations contracted for the 1997 fiscal year were planned for early in the calendar year, however a number of operations were not begun until late winter. Beginning on March 2, 1997, loggerhead takes occurred in Kings Bay at rates higher than previously observed. Six turtles were taken in four days of dredging. While consulting with NMFS regarding this unprecedented rate of loggerhead takes, a COE specialist from the Waterways Experiment Station proposed some modifications to the draghead with the potential to reduce sea turtle takes. Relocation trawling was also initiated, beginning March 9,1997; however, as can be seen on Table 2, these efforts did not preclude further sea turtle takes in Kings Bay. Dredging was terminated on March 12, 1997, with only 53 percent of the project completed.

Table 1 lists the sea turtle takes observed in hopper dredges throughout the SAD during 1997, as well as the steps taken by COE to reduce the likelihood of takes. Deflector dragheads were re-engineered to fit specific dredges wherever possible and relocation trawling was initiated. Dredging was terminated prior to completion of projects in Kings Bay, Brunswick Harbor, Savannah Harbor and Charleston Harbor. Consultation was reinitiated to consider the effects of the remaining hopper dredging projects anticipated for the 1997 fiscal year. In addition to those specific projects listed in the resulting April 1997 IBO, dredging at Reach II of the Myrtle Beach dredge disposal area is likely to begin before the fiscal year ends. Despite ongoing dredging at the Oregon Inlet, no sea turtle takes have been documented since May 15.

**Proposed Activity**

This consultation addresses the use of hopper dredges in channels and borrow areas along the Atlantic portion of COE's SAD within the existing dredging windows (Table 3). Channels dredged by hopper dredges include: Oregon Inlet, Morehead and Wilmington Harbors, Charleston, Port Royal and Savannah harbors, Brunswick, Kings Bay, Jacksonville, St. Augustine and Ponce de Leon inlets, West Palm Beach, Miami and Key west channels. Borrow areas that may be dredged by hopper dredges include areas off of Dade County Florida and Myrtle Beach South Carolina.

Draghead deflectors will be used on all projects and observers will be required at least during those periods identified in Table 3. Year-round observer coverage will likely be required by the COE for most channels, particularly those with histories of high sea turtle catch rates such as Kings Bay. Within the South Atlantic Division, the COE will try to schedule dredging of the highest risk areas (Canaveral, Brunswick, Savannah, and Kings Bay) during periods when nearshore waters are coolest -- after December 15 but well before March. Priority for winter dredging will also be given to areas that have substrates that reduce the efficiency of the deflector (Wilmington Harbor channel, Reach 1 of Myrtle Beach). Completion of all projects during the cold-water months will be attempted when possible.

**Listed Species and Critical Habitat**

Listed species under the jurisdiction of the NMFS that may occur in channels along the southeastern United States and which may be affected by dredging include:

THREATENED:
(1) the threatened loggerhead turtle - Caretta caretta

ENDANGERED:

(1) the endangered right whale - Eubalaena glacialis
(2) the humpback whale - Megaptera novaeangliae
(3) the endangered/threatened green turtle - Chelonia mydas
(4) the endangered Kemp's ridley turtle - Lepidochelys kempii
(5) the endangered hawksbill turtle - Eretmochelys imbricata
(6) the endangered shortnose sturgeon - Acipenser brevirostrum

Green turtles in U.S. waters are listed as threatened, except for the Florida breeding population which is listed as endangered.

Additional endangered species which are known to occur along the Atlantic coast include the finback (Balaenoptera physalus), the sei (Balaenoptera borealis), and sperm (Physeter macrocephalus) whales and the leatherback sea turtle (Dermochelys coriacea). NMFS has determined that these species are unlikely to be adversely affected by hopper dredging activities.

Information on the biology and distribution of sea turtles can be found in the 1991 and 1995 BOs, which are incorporated by reference. Channel specific information has been collected by COE for channels at Morehead City, Charleston, Savannah, Brunswick, Fernandina and Canaveral, and is presented in detail in COE summary report entitled "Assessment of Sea Turtle Abundance in Six South Atlantic US Channels" (Dickerson et al., 1994) and in the COE Biological Assessment.

There is no significant new information regarding the status of these species that has not been discussed in the BOs that have been incorporated by reference (March 12, 1997 and August 25, 1995).

**Assessment of Impacts**

The Biological Opinion issued in 1991 contained strict dredging windows that appeared to be very effective at limiting the number of sea turtles taken by hopper dredges during channel maintenance dredging in the Southeast U.S. along the Atlantic coast. Between 1991 and 1995, no more than 8 turtles were taken in any year, and many of those taken were released alive. Studies conducted by the COE (Dickerson et al., 1994) documented turtle distribution and abundance in six channels that suggesting the existing windows were accurate. However, the COE requested expansion of existing windows to lessen the burden of maintenance dredging while testing and further developing a rigid draghead deflector design. The deflector was effective at pushing aside mock turtles when tested during 1994, and preliminary field trials in the Canaveral shipping channel had encouraging results. NMFS considered this new information, presented by the COE in a biological assessment forwarded to NMFS in November 1994. The resulting BO, issued August 25 1995 expanded dredging windows and modified observer requirements.

Only 9 sea turtle takes were documented in 1996, suggesting that the expanded dredging windows and the deflector requirements provided protection to sea turtles that was similar to the previously more-restrictive windows. However, the COE's internal policy resulted in conduct of most of the hopper dredging projects during months when coastal waters were still cold, consistent with the previous dredging. The increased rate of take observed during 1997 and discussed below suggests that the restriction of hopper dredging to months when nearshore waters are cold remains the best method for minimizing sea turtle takes.

Unfortunately, a number of dredging projects contracted for early 1997 in the SAD but not restricted to mid-winter months, were delayed into the Spring. This delay coincided with a unseasonably warm winter, when the waters of Kings Bay reached 60°F in early March. The incidental take of nine loggerheads in Kings Bay over only 11 days of dredging indicated that the nearshore abundance of loggerheads was high, apparently higher than during the late 1980's when observers were first deployed on hopper dredges in Kings Bay.

There were other indicators of high nearshore sea turtle abundance along the Southeast U.S. Atlantic coast during 1997. Commercial shrimp trawling conducted without the use of turtle excluder devices (TEDs) offshore of South Carolina and Georgia between May 15 and July 15 resulted in sea turtle catch rates higher than previously documented. Sixty nine sea turtles were taken in 29 days of shrimping off of South Carolina, including 65 loggerheads, 3 ridleys and 1 leatherback. Forty-six sea turtles were taken in 17 days of towing off of Georgia. The sea turtle catch per unit effort (CPUE) for this operation is about 0.35 turtles per hour of trawling, standardized to 100 feet (30.5 m) of total headrope length fished. The CPUE (same units) for commercial shrimp trawling in the 1970s and 1980s reported by Henwood and Stuntz (1987a) was only 0.0487. Loggerhead turtles were the predominant species reported by Henwood and Stuntz and have also been predominantly observed in this study. They account for most of the increase in overall CPUE. The CPUE for loggerheads alone has been greater than 0.30 turtles per hour, while the value reported in Henwood and Stuntz was 0.0456 turtles per hour. The rates of taking for leatherback and Kemp's ridley turtles in the Atlantic study area have also been higher than anticipated.

The high relative density of sea turtles during 1997 may be due to an unseasonably warm winter or other factors contributing to annual variations in abundance, due to an actual increase in the abundance of benthic immature sea turtles in the loggerhead population, or due to a combination of these factors. Trends in the status of loggerheads are generally identified at the nesting beach, when the most accessible life stage, adult nesting

females, can be counted. Because they mature at 20 to 30 years of age, increases or decreases in the abundance of benthic immature loggerheads as determined by incidental captures in nearshore waters would not be observed for decades. While nesting beach surveys suggest that the South Florida population of loggerheads increased and now appears to be stable, increases have not been apparent on nesting beaches of Georgia and South Carolina. Further work on the development of multi-year in-water sampling sites is needed to identify trends in multiple age-classes of the loggerhead population.

The COE noted that 14 of the 28 takes that occurred during 1997 were on the same dredge, the Eagle. The high rate of takes, particularly on this dredge, suggested that the deflecting draghead was not installed properly or was not being operated properly. Takes occurred in a number of the 1997 dredge projects during clean-up. Ridges left behind after the initial dredging are leveled during clean-up, but the draghead passes over troughs. Takes occurring during clean-up may be difficult to avoid since the draghead deflector must remain hard on the bottom to be effective.

The COE has been conducting meetings between districts within the SAD to discuss the results of assessments of channel conditions and dredge inspections. They have determined that the draghead deflector has not been working properly due to poor education of the dredge operators on its proper use, and due to poor tailoring of the deflector to specific dragheads. Increased efforts to educate dredge operators are planned. Additionally, since fewer than 10 private hopper dredges operate within SAD, engineers that have designed the conceptual deflector will be sent to the dredges to insure that the deflectors are adapted to each draghead and that the operators understand how to use the deflector effectively.

CUMULATIVE EFFECTS

"Cumulative effects" are those effects of future state or private activities, not involving Federal actions, that are reasonably certain to occur within the action area of the Federal action subject to consultation. These are discussed in detail in the biological opinions incorporated by reference.

Conclusion:

NMFS believes that the elevated rate of observed sea turtle takes by dredges in the southeastern United States during March of 1997 was likely due to increased abundance of loggerheads in nearshore waters due to an unseasonably warm winter. There is no way to predict whether similar conditions will be encountered in upcoming seasons. Over the past six years, the COE's SAD has

continuously expressed a commitment to minimize sea turtle takes, and has conducted research and taken repeated steps to further this goal. Repeated termination of dredging operations due to high sea turtle takes during 1997 confirms their commitment to avoid sea turtle takes. Further efforts to educate the dredging industry and recruit their interest and involvement in avoiding sea turtle takes are necessary and are planned by the COE. Additionally, the COE has committed to additional efforts to improve the effectiveness of the deflecting draghead. The sea turtle deflector should be tailored to each hopper dredge draghead and the dredge operators should be fully trained in the operation of the draghead to ensure proper use and improve effectiveness. Improvements in operator and deflector performance are necessary prior to reliance on the draghead as a mechanism for reducing sea turtle takes.

NMFS anticipates that the COE's interest in improving the performance of the deflector, their commitment to limit the use of hopper dredges in channels of high sea turtle abundance during periods when nearshore waters are likely to be cold, and their overall goal of further reducing sea turtle takes during hopper dredge activities will minimize the interactions of hopper dredges with sea turtles. However, annual variation in the abundance of sea turtles in some channels and borrow areas make it likely that sea turtle takes will still occur. Additionally, overall increases in loggerhead and Kemp's ridley populations are anticipated due to TED requirements that have reduced the mortality rates of benthic lifestages of these species. Lastly, in some years high levels of hopper dredging activity may be necessary. For example, termination of projects prior to completion during FY 1997 may result in an increase in the number and length of hopper dredging projects necessary for channel maintenance during FY 1998. Therefore, NMFS believes that up to 35 loggerheads may be taken by injury or mortality, as well as 7 Kemp's ridleys, 7 green turtles, 2 hawksbills, and 5 shortnose sturgeon. These takes are not likely to jeopardize the continued existence of these species and the ongoing commitment by the COE to further minimize takes may reduce the likelihood of sea turtle takes in the future even if nearshore sea turtle abundances increase.

**Conservation Recommendations**

Pursuant to section 7(a)(1) of the ESA, conservation recommendations are made to assist COE in reducing or eliminating adverse impacts to loggerhead, green, and Kemp's ridley turtles that result from hopper dredging in the southeastern United States. The recommendations made in the 1995 BO are pertinent to this consultation as well, and therefore remain valid. Further recommendations are given below.

- Because of the possibility of annual variation in water temperatures, sea turtle abundance, and hopper dredging demand, NMFS has retained the dredging windows established in the 1995 BO. However, the COE has expressed a commitment to deploy hopper dredges during cold-water periods in channels with high sea turtle abundance or with substrates that render the deflector ineffective. NMFS appreciates the COE's commitment to do this, and recommends that the SAD priority list be finalized and distributed to the Districts and NMFS prior to the initiation of dredging during FY 1998.

- The COE should work with the dredging industry to insure their understanding of the importance of sea turtle conservation and to increase the industry's interest in minimizing sea turtle takes.

- Greater than 50% of the loggerheads taken in North Carolina may be from the northern nesting assemblage of loggerheads. While recent loggerhead nesting beach surveys did not identify a decline in the number of nesting females on beaches north of Cape Canaveral, increases observed in the south Florida nesting assemblage have not been noted. High sea turtle catch rates during only the early weeks of the wood debris clean-up conducted by COE off Cape Fear during 1997, as well as preliminary work conducted in North Carolina, suggest that turtles may be abundant in North Carolina channels primarily during migration into and emigration out of North Carolina inshore waters. The COE should work with the NMFS Beaufort Laboratory and the North Carolina Division of Marine Fisheries to document the movements of sea turtles off North Carolina during spring and fall months. Results from these studies may provide insights into further safe dredging windows to minimize the likelihood of takes of loggerheads from the more vulnerable northern nesting assemblage. Summer windows would reduce the pressure to complete all SAD hopper dredging during cold-water periods.

- The COE should investigate further modifications of the draghead to minimize the need for clean-up. Some method to level the peaks and valleys created by dredging would reduce the amount of time dragheads are removed from the bottom sediments.

## Incidental Take Statement

Section 7(b)(4) of the Endangered Species Act (ESA) requires that when a proposed agency action is found to be consistent with section 7(a)(2) of the ESA, and the proposed action may incidentally take individuals of listed species, NMFS will issue a statement that specifies the impact of any incidental taking of endangered or threatened species. It also states that reasonable and prudent measures, and terms and conditions to implement the measures, be provided that are necessary to minimize such impacts. Only incidental taking resulting from the agency action, including incidental takings caused by activities approved by the agency, that are identified in this statement and that comply with the specified reasonable and prudent alternatives, and terms and conditions, are exempt from the takings prohibition of section 9(a), pursuant to section 7 of the ESA.

Based on the high rate of sea turtle takes observed during of 1997, increases in the Kemp's ridley population, possible increases in the benthic lifestages of loggerhead populations, annual variation in nearshore abundance of sea turtles and hopper dredge demands, the NMFS anticipates that hopper dredging in the Southeast U.S. Atlantic area of the SAD may result in the injury or mortality of sea turtles and shortnose sturgeon. Therefore, a low level of incidental take, and terms and conditions necessary to minimize and monitor takes, are established. The annual (by fiscal year) documented incidental take, by injury or mortality, of seven (7) Kemp's ridleys, seven (7) green turtles, two (2) hawksbills, thirty-five (35) loggerhead turtles, and five (5) shortnose sturgeon is set pursuant to section 7(b)(4) of the ESA.

To ensure that the specified levels of take are not exceeded early in any project, COE should reinitiate consultation for any project in which more than one turtle is taken within 24 hours, or once five or more turtles are taken. The Southeast Region, NMFS, will cooperate with COE in the review of such incidents to determine the need for developing further mitigation measures or to terminate the remaining dredging activity.

Section 7(b)(4)(c) of the ESA specifies that in order to provide an incidental take statement for an endangered or threatened species of marine mammal, the taking must be authorized under section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA). Since no incidental take in the Atlantic Region has been authorized under section 101(a)(5) of the MMPA, no statement on incidental take of endangered right whales is provided.

The reasonable and prudent measures that the NMFS believes are necessary to minimize the impact of hopper dredging in channels and borrow areas in the southeastern United States have been

discussed with COE. The following terms and conditions are established, in addition to those identified in the 1995 BO, to implement these measures and to document the incidental take should such take occur.

1. The COE's draghead deflector engineer that assistant in this design design should inspect the rigid draghead deflector annually to ensure that the deflector has been tailored appropriately to each draghead. Additionally, the inspector should assess whether the dredge operator appears to be familiar with the operation of the draghead deflector and provide necessary training where appropriate.

2. If the rigid draghead deflector appears to be ineffective in Wilmington Harbor and slows the dredging project such that the amount of time the hopper dredge will be deployed is increased, the deflector should be removed from the draghead for that channel.

3. The COE should develop an educational/training program for dredge operators to increase their understanding of how the draghead deflector works and why it is necessary.

# SOUTH ATLANTIC COAST HOPPER DREDGING (Calendar Year 97)

| Project | Dredge Period | Approximate Amount of Work Completed | Turtle Takes | Mitigative Measures Taken | Remarks |
|---|---|---|---|---|---|
| Kings Bay | 3/1/97 to 3/12/97 | Removed 437,000 out of 821,000 CY<br>Approximately 53% completed. | L 3/2/97<br>L 3/4/97<br>L 3/5/97<br>L 3/6/97<br>L 3/6/97<br>L 3/6/97<br>L 3/8/97<br>L 3/8/97<br>L 3/12/97 | Sea turtle deflecting draghead used. Jacksonville Dist. specialist inspected deflector on 3/6/97. Relocation trawling started 3/9/97. Extensive, ongoing consultation with NMFS as takes occurred. All work terminated 3/12/97 due to high take levels even though relocation trawling had become operational. | Water temp. 57 to 58 F. Dredge Eagle 1. Two takes in on batch on 3/6/97 and 3/8/97. Contract required removal of relatively small veneer of material. Most takes occurred through starboard dragarm. Rapidity of takes was a surprise to all concerned. |
| Brunswick Harbor | 2/6/97 to 3/19/97 | Removed 975,400 CY. Work stopped at 50% completion. | L 3/9/97 | Sea turtle deflecting draghead used. Sea turtle abundance, based on visual observations, prompted termination of work because of potential for unacceptable levels of entrainment. | Water temp 63 F. Dredge RN Weeks. Historic abundance of sea turtles and high levels of entrainment in 1991 was part of the reason for termination of work. |
| Savannah Harbor | 3/4/97 to 3/22/97 | Removed about 545,500 CY, or about 52% of what could have been dredged. | L 3/14/97<br>L 3/22/97<br>L 3/22/97 | Sea turtle deflecting draghead used. Dredging terminated so as not to take any more sea turtles. | Water temp. 63 F. Numerous sea turtles sighted. Dredge Ouachita was 'skimming' high areas to bring depth to acceptable levels quickly before leaving for urgent work in Mississippi River. |
| Charleston Harbor | 3/14/97 to 3/26/97 | Bid qty 900,000 CY<br>Req. qty 408,000 CY<br>Removed qty 350,000 CY. About 39% completed. | L 3/19/97<br>L 3/20/97<br>L 3/21/97<br>L 3/25/97<br>L 3/26/97 | WES expert / developer of sea turtle deflecting draghead system, conducted onboard inspection and made recommendations. Some changes to draghead and dredging operation made. Relocation trawling performed. | Water temp. 61 F.<br>Dredge Eagle 1. |
| Myrtle Beach borrow area (Phase 1) | 9/15/96 to 5/13/97 | Bid qty 2.5 million CY.<br>Work completed. | L 4/15/97<br>L 5/04/97<br>L 5/09/97 | Sea turtle deflecting draghead used.<br>Relative abundance trawling on 3/28-29/97, with 12 hours of "nets in water", yielded one loggerhead. Trawling on 5/8 thru 5/13/97 yielded no sea turtles. | This is one of 3 phases / reaches of total project. Part work in all phases is by pipeline dredge. Total quantity of material to be dredged is about 6 million CY |
| Morehead City Harbor | 4/25/97 to 5/16/97) | About 120,000 CY removed out of about 1,720,000 CY. About 7% of work completed. | L 4/27/97<br>L 4/30/97<br>L 5/01/97<br>L 5/02/97<br>L 5/15/97<br>L 5/15/97 | Sea turtle deflecting draghead.<br>Relocation trawling began 5/8/97 and continued until termination of dredging. One loggerhead captured on 5/9/97. Nighttime trawling performed 5/10 & 5/11 with no turtles captured. Because of concern over extensive takes, dredging terminated with only 7 % of work done. | Dredge Manhattan Island |
| Wilmington Harbor (Interior Channels) | 2/14/97 to 3/13/97 | About 217,300 CY removed. Work completed. | No takes | | Dredge McFarland |
| MOTSU | 3/14/97 to 4/3/97 | About 60,000 CY. removed. Work completed. | No takes | | Dredge McFarland |
| Wilmington Harbor (Ocean Bar) | 4/3/97 to 4/30/97 | About 300,000 CY Work completed. | L 4/07/97 | Sea turtle deflecting draghead. | Dredge RN Weeks |
| Dade County Beach (Miami Reach) | 3/30/97 7/20/97 (estimate) | About 380,00 of 475,000 CY completed as of 6/6/97. | No takes | Based on past dredging and anecdotal information about sea turtles in area, takes are not anticipated. | |

L = Loggerhead CY = Cubic Yards

ble 2a. Sea turtle takes (includes live, injured and killed) observed on hopper dredges prior to the regional consultation. Observers were not required on all projects until 1989, after which extensive monitoring was required.

| Year | Project | Turtle Takes |
|---|---|---|
| 1980 Total = 71 | Canaveral | 50 Cc, 3 Cm, 18 Unidentified |
| 1981 Total = 6 | Canaveral | 3 Cc, 1 Cm, 2 Unidentified |
| 1984/1985 Total = 12 | Canaveral | 1 Cc, 11 Unidentified |
| 1986 Total = 9 | Canaveral | 5 Cc |
| | Kings Bay | 1 Cc, 3 Cm |
| 1987 Total = 5 | Kings Bay | 3 Cc, 1 Cm, 1 Unidentified |
| 1988 Total = 46 | Brunswick | 1 Cc |
| | Canaveral | 13 Cc, 3 Cm, 18 Unidentified |
| | Kings Bay | 6 Cc, 3 Lk, 2 Cm |
| 1989 Total = 21 | Canaveral | 9 Cm, 2 Unidentified |
| | Kings Bay | 8 Cc, 1 Cm |
| | Savannah | 1 Cc |
| 1990 Total = 12 | Canaveral | 3 Cc, 5 Cm |
| | Kings Bay | 4 Cc |
| 1991 Total = 43 | Brunswick | 20 Cc, 1 Lk, 1 Unidentified |
| | Charleston | 3 Cc |
| | Kings Bay | 1 Cc |
| | Savannah | 17 Cc |

= *Caretta caretta*, Loggerhead ; Cm = *Chelonia mydas*, Green turtle; Lk = *Lepidochelys kempi*, Kemp's ridley turtle

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Table 2b. Sea turtle takes (includes live, injured and killed) observed on hopper dredges between the November 1991 and the August 1995 Regional Biological Opinion

| Year | Project | Turtle Takes |
|---|---|---|
| 1992 Total = 2 | Port Royal, SC | 2 Cc |
| 1994 Total = 8 | Canaveral | 1 Cm |
| | Morehead City | 1 Cc |
| | Kings Bay | 2 Cc |
| | Savannah | 3 Cc, 1 Lk |
| 1995 Total = 6 | Canaveral | 1 Cc |
| | Palm Beach | 3 Cc, 2 Cm |

Cc = *Caretta caretta*, Loggerhead ; Cm = *Chelonia mydas*, Green turtle; Lk = *Lepidochelys kempi*, Kemp's ridley turtle

Table 2c. Sea turtle takes (includes live, injured and killed) observed on hopper dredges after the August 25, 1995 Biological Opinion

| Year | Project | Turtle Takes |
|---|---|---|
| 1996 Total = 9 | Morehead City Harbor | 1 Cc |
| | Myrtle Beach (Borrow Area Reach I) | 2 Cc |
| | Kings Bay | 1 Cc |
| | Palm Beach | 1 Cc, 1 Cm |
| | Wilmington Harbor | 3 Cc |
| 1997 Total = 28 | Brunswick Harbor | 1 Cc |
| | Charleston Harbor | 5 Cc |
| | Kings Bay | 9 Cc |
| | Morehead City Harbor | 6 Cc |
| | Myrtle Beach (Borrow Area Reach 1) | 3 Cc |
| | Savannah Harbor | 3 Cc |
| | Wilmington Harbor (Ocean Bar) | 1 Cc |

**TABLE 3:** Current requirements for dredging windows, observer requirements and use of hopper dredges in borrow areas along the east coast established in the August 1995 BO.

| AREA | | SEA TURTLE MONITORING: NAVIGATION CHANNELS | | SEA TURTLE MONITORING: BORROW AREAS | |
|---|---|---|---|---|---|
| | WHALE MONITORING | DREDGING WINDOWS | MONITORING | WINDOWS | MONITORING |
| North Carolina to Pawleys Island, SC (includes channels at Oregon Inlet, Morehead City and Wilmington) | One observer (daytime coverage) between 1 Dec and 31 Mar. Monitoring by dredge operator and sea turtle observer between 1 Apr and 30 Nov. | Year Round | Two observers (100% monitoring) 1 Apr - 30 Nov | Year Round | One observer (50% monitoring) 1 Apr - 30 Nov |
| Pawleys Island, SC to Tybee Island, GA (includes channels at Charleston, Port Royal and Savannah) | One observer (daytime coverage) between 1 Dec and 31 Mar. Monitoring by dredge operator and sea turtle observer between 1 Apr and 30 Nov. | 1 Nov - 31 May | Two observers (100% monitoring) 1 Nov - 30 Nov and 1 Apr - 31 May | Year Round | One observer (50% monitoring) 1 Apr - 30 Nov |
| Tybee Island, GA to Titusville, FL (includes channels at Brunswick, Kings Bay, Jacksonville, St. Augustine, and Ponce de Leon Inlet) | Aerial surveys in right whale critical habitat, 1 Dec thru 31 Mar. One observer (daytime coverage) between 1 Dec and 31 Mar. | 1 Dec - 15 Apr | Two observers (100% monitoring) 1 Apr - 15 Apr | Year Round | One observer (50% monitoring) 1 Apr - 15 Dec |
| Titusville, FL to Key West, FL (includes channels at West Palm Beach, Miami and Key West) | Whale observations are not necessary beyond those conducted between monitoring of dredge spoil. | Year Round | Two observers (100% monitoring) year round | Year Round | One observer (50% monitoring) year round |

AUG 25 1995

NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

AUG 25 1995

MEMORANDUM FOR: F/PR - William W. Fox, Jr.

FROM: F/PR8 - Russell J. Bellmer

SUBJECT: Endangered Species Act Section 7 Consultation with U.S. Army Corps of Engineers, South Atlantic Division on Hopper Dredging of Channels and Borrow Areas in the Southeastern U.S. from North Carolina through Florida East Coast

The attached draft Biological Opinion submitted for your signature was prepared by F/SE013 and has been reviewed by GCF, PR2, and PR8. The opinion is non-controversial and has been discussed with Corps of Engineers (COE) staff in detail. However, it addresses concerns regarding a publicly controversial erosion control (beach nourishment) project in Dade County, Florida. Impacts of beach nourishment on sea turtle nesting have been documented. However, for the first time, we are also addressing the possible impacts of sand collection from offshore "borrow" areas by hopper dredges along the Atlantic Southeast Coast from North Carolina through Florida.

The attached opinion supersedes the November 25, 1991 BO issued to the COE's South Atlantic Division which found that continued hopper dredging activity was likely to jeopardize the continued existence of the Kemp's ridley sea turtle. The reasonable and prudent alternative issued with the 1991 BO included the prohibition of hopper dredging in the Canaveral channel, seasonal restrictions which allowed hopper dredging from December through March in channels from North Carolina through Canaveral, or use of alternative dredges in all southeastern U.S. channels. Only 14 sea turtles takes by hopper dredges have been documented since implementation of the 1991 BO.

The COE has recently concluded extensive research in six southeast channels: Morehead City Harbor entrance channel, Charleston Harbor entrance channel, Savannah Harbor entrance channel, Brunswick Harbor entrance channel, Fernandina Harbor-St. Marys River entrance channel and the Canaveral Harbor entrance channel. Their request for a new consultation, dated November 8, 1994, asks for refinements in the restrictions due to new, more precise information. Additionally, the draghead deflector developed by COE has shown promising results in preliminary tests. The attached biological opinion concurs with the COE findings that listed dredging windows and further development of the rigid draghead deflector reduce the effects of hopper dredging on sea turtle species, while allowing dredging to continue. Hopper dredging windows have been modified, and observer requirements have been expanded to incorporate beach nourishment activities.

National Oceanic and Atmospheric Adminis
NATIONAL MARINE FISHERIES SERVICE

AUG 25 1995

Colonel James H. Simms, USA
Acting Commander
South Atlantic Division, Corps of Engineers
Room 313, 77 Forsyth St., S.W.
Atlanta, Georgia 30335-6801

Dear Colonel Simms:

Enclosed is the biological opinion that concludes formal Endangered Species Act Section 7 consultation on hopper dredging of channels and beach nourishment activities in the southeastern United States from North Carolina through Florida East Coast. The National Marine Fisheries Service (NMFS) concurs with COE findings that dredging windows and further development of the rigid draghead deflector reduces the effects of hopper dredging on sea turtle species, while allowing dredging to continue. As you know, this consultation supersedes a previous regional opinion issued to the COE South Atlantic Division (SAD) on channel dredging in which NMFS found that continued hopper dredging activity in southeast channels along the Atlantic Coast was likely to jeopardize the continued existence of the Kemp's ridley sea turtle (November 25, 1991). The reasonable and prudent alternative issued with the 1991 opinion included the prohibition of hopper dredging in the Canaveral channel, seasonal restrictions which allowed hopper dredging from December through March in channels from North Carolina through Canaveral, or use of other dredges in all southeastern U.S. channels. Since the implementation of this alternative in the winter of 1991, only 14 takes of sea turtles, including three live turtles, have been documented on board hopper dredges in channels along the southeastern U.S. Atlantic Coast.

The Incidental Take Statement, reasonable and prudent measures, and conservation recommendations listed in the enclosed opinion have been discussed with the COE's SAD staff. Of note, hopper dredging windows are modified from the windows established in 1991 and observer requirements have been expanded to incorporate beach nourishment activities. The continued deployment of observers, and participation in the Right Whale Early Warning System, are also listed requirements within this biological opinion. Please note that the authorization for this incidental take expires August 5, 2000. In addition, consultation must be reinitiated when 75% of the authorized incidental take is reached.

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Hopper dredging in Cape Canaveral, Florida is not considered under this consultation since turtle concentrations in Canaveral remain high year-round. Projects requiring the use of a hopper dredge in Canaveral will require further, project-specific, consultation.

Much of the new information considered in the enclosed opinion was the result of extensive research efforts recently concluded by COE in six southeast channels: Morehead City Harbor entrance channel, Charleston Harbor entrance channel, Savannah Harbor entrance channel, Brunswick Harbor entrance channel, Fernandina Harbor-St. Marys River entrance channel, and the Canaveral Harbor entrance channel. The results of this research support some modifications to previous seasonal restrictions for hopper dredging in these channels. Additionally, a draghead deflector has been developed that has shown promising results during preliminary tests and field application.

Through an extensive sea turtle research program and participation on the Right Whale Recovery Plan Implementation Team, the COE's SAD has become a leader among Federal action agencies in the southeast region in endangered species research and conservation. We look forward to continued cooperative efforts with your division.

Sincerely,

William W. Fox, Jr., Ph.D.
Director
Office of Protected Resources

Enclosure

cc: ACOE Charleston District, Col. George Hazel
Wilmington District, Col. Robert Sperperg
Savannah District, William Bailey
Jacksonville District, A. J. Salem
F/SEO13 - Oravetz

UNITED STATES DEPARTMENT OF COMM
National Oceanic and Atmospheric Administr
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

# Endangered Species Act - Section 7 Consultation

## Biological Opinion

**Agency:** U.S. Army Corps of Engineers, South Atlantic Division

**Activity:** Hopper dredging of channels and beach nourishment activities in the Southeastern United States from North Carolina through Florida East Coast

**Consultation Conducted By:** National Marine Fisheries Service, Southeast Regional Office

**Date Issued:** August 25, 1995

## BACKGROUND

The U.S. Army Corps of Engineers (COE) has primary responsibility for maintaining navigational channels in U.S. waters. To accomplish this task, dredging is periodically required. A variety of dredge types and techniques are employed on a channel-specific basis, dependent upon the characteristics of channels, availability of disposal sites, local environmental regulations, types of material to be removed, proposed timing of the dredging, etc. In the southeastern United States, at least three types of dredges (hopper dredges, clamshell dredges, and pipeline dredges) are commonly used.

In addition, Congress has mandated that the COE provide periodic beach nourishment to certain beaches in the southeastern U.S. that suffer severe erosion rates. Nourishment activities consist of dredging coarse high-quality sand from offshore borrow areas then pumping the material onshore.

A formal consultation conducted on dredging and beach nourishment operations from North Carolina through Cape Canaveral, Florida, in 1991, and incorporated by reference, concluded that clamshell and pipeline dredges were not likely to adversely affect listed species. There is no new information to change the basis for

that finding. Lethal takes of sea turtles by hopper dredges have been documented, however, and consultations on takes have been conducted since 1980.

**Previous Consultations**

Consultation on the effects of hopper dredging in the Canaveral ship channel was initiated in August 1978, after NMFS trawl surveys verified reports of high turtle abundance in the channel. On March 30, 1979, NMFS issued a biological opinion based on a threshold examination of the situation. This opinion concluded that insufficient information existed to determine whether or not dredging was likely to jeopardize the continued existence of sea turtles. Through agreement with the COE and the U.S. Navy, trawl surveys were implemented to further assess turtle abundance and distribution in the channel.

On January 22, 1980, the National Marine Fisheries Service (NMFS) issued a biological opinion concluding that "dredging may result in the loss of large numbers of loggerhead sea turtles but is not likely to result in jeopardizing either the loggerhead or Atlantic ridley sea turtle stocks." This opinion recommended that NMFS-approved observers be placed aboard hopper dredges in the Canaveral channel to monitor turtle take, and that dredging be restricted to the period of August 1 through November 1. No evidence of turtle take by hopper dredges existed at this point, but the potential for take was recognized.

A total of 71 turtle takes by hopper dredges were documented in the Canaveral channel over the period of July 11 through November 13, 1980. These takes were considered minimum estimates of mortality due to restrictions inherent in observing turtles within the dredged material. From 1980 through 1986, NMFS, the COE, and the U.S. Navy continued efforts to reduce or eliminate turtle take by hopper dredges in the Canaveral entrance channel. Efforts included attempts to scare turtles out of the channel, detect and capture turtles, remove and relocate turtles, and deflect turtles from the draghead. No acceptable means of eliminating the take of sea turtles by hopper dredges was identified, and take of sea turtles continued.

Trawl surveys of five east coast channels, conducted during 1981 and 1982 (Butler _et al_., 1987), indicated that these channels did

not contain sea turtles at abundances approaching those observed in Canaveral. One or two turtles were collected in each of the surveyed channels, while hundreds were caught in the Canaveral channel. Because NMFS had no information to suggest that turtle takes in other channels was significant, additional channel surveys were not required, and the Canaveral hopper dredging project was treated as a unique problem.

In 1986, the U.S. Navy reinitiated Endangered Species Act (ESA) Section 7 consultation on Kings Bay, Georgia, channel dredging. The scope of the project involved widening and deepening existing channels and extension of the channel approximately 14 miles. The Navy proposed to implement sea turtle conservation measures including observer coverage, screening of the dredge, and a stand-by trawler to catch and remove turtles, if necessary. From July 1987 through December 1989, a total of 21 turtles were taken during hopper dredging operations in the Kings Bay project.

Turtle take by hopper dredges in Kings Bay resulted in major changes in NMFS policy on channel dredging. This was the first documented take of turtles by hopper dredges anywhere other than in the Canaveral channel. Additionally, while takes in Canaveral were confined to loggerhead turtles, Kings Bay takes included three endangered Kemp's ridley turtles and three endangered green turtles. NMFS began to consider the additive consequences of hopper dredging along the southeast coast.

The Jacksonville District COE and the COE Waterways Experiment Station jointly sponsored a May 11-12, 1988, "National Workshop on Methods to Minimize Dredging Impacts on Sea Turtles," held in Jacksonville, Florida. This workshop brought together representatives of the COE, NMFS, the U.S. Navy, the dredging industry and the environmental community to discuss the dredging/sea turtle conflict. In a July 8, 1988, letter from the Assistant Administrator for Fisheries to the Acting Commander of the COE, NMFS applauded the COE efforts in sponsoring the workshop and advised the COE of agency plans to assess the cumulative impacts to sea turtles of dredging in channels other than Canaveral. Formal consultation was requested for all areas in which hopper dredging was proposed, and observers were required on 25-100 percent of all hopper dredging activities in Brunswick, Savannah, and Wilmington Harbor dredging projects.

Consultation was reinitiated in 1991 in response to the high levels of turtle takes observed, as well as nearby strandings of crushed turtles, during hopper dredging in Brunswick and Savannah channels. The biological opinion, issued November 25, 1991, found that continued unrestricted hopper dredging in channels along the southeast region's Atlantic coast could jeopardize the continued existence of listed sea turtles. A reasonable and prudent alternative was given which included the prohibition of hopper dredging in the Canaveral channel, seasonal restrictions which allowed hopper dredging from December through March in channels from North Carolina through Canaveral, or use of alternative dredges in all southeastern U.S. channels.

The reasonable and prudent alternative issued in the 1991 biological opinion has proven very effective in reducing sea turtle captures. Since the implementation of the measures of the 1991 biological opinion, only 14 takes of sea turtles, including three live turtles, have been documented on board hopper dredges in channels along the southeastern U.S. Atlantic coast.

The COE has recently concluded extensive research in six southeast channels: Morehead City Harbor entrance channel, Charleston Harbor entrance channel, Savannah Harbor entrance channel, Brunswick Harbor entrance channel, Fernandina Harbor - St. Marys River entrance channel, and the Canaveral Harbor entrance channel. Seasonal restrictions were supported by the research; however, refinements in the restrictions due to new, more precise information were requested in the COE request for a new consultation, dated November 8, 1994. Additionally, a draghead deflector has been developed that has shown promising results in preliminary tests.

## PROPOSED ACTIVITY

This consultation addresses COE channel dredging activities along the southeastern Atlantic seaboard from North Carolina through Key West, Florida (see Figure 1 from COE's Biological Assessment submitted November 8, 1994). This includes maintenance dredging, new construction dredging, and beach nourishment activities. A summary of major channel dredging projects in which hopper dredges are normally used include: Oregon Inlet, Morehead City, and Wilmington Harbor in North Carolina; Charleston and Port

Royal in South Carolina; Savannah, Brunswick, and Fernandina-St. Marys in Georgia (King's Bay); Jacksonville, St. Augustine, Ponce Inlet, Canaveral, West Palm Beach, and Miami in Florida.

Information on the timing and amount of materials removed during past hopper dredging projects in these channels was provided in the Biological Assessment (COE, November 8, 1994). Generally, the COE has asked that channel hopper dredging windows specified in the 1991 biological opinion be modified from no hopper dredging in Canaveral and dredging in other regional channels from December through March to:

| HOPPER DREDGING IN SOUTH ATLANTIC DIVISION | | |
|---|---|---|
| LOCATION | HOPPER DREDGING WINDOW[1] | INCIDENTAL TAKE MONITORING[2] |
| North Carolina to Pawies Island, S.C. | Year Round | 1 May - 1 Nov |
| Pawies Island, S.C. to Tybee Island, Ga. | 1 Nov - 31 May | 1 Nov - 1 Jan<br>1 Apr - 31 May |
| Tybee Island, Ga. to Titusville, Fla. | 15 Dec - 1 May | 15 Dec - 1 Jan<br>15 Mar - 1 May |
| Titusville, Fla. to Key West, Fla. | Year Round[3] | Year Round |

1 Applies to all hopper dredging along South Atlantic Coast. Use of sea turtle deflecting draghead is required unless waiver is granted by CESAD.

2 For navigation projects this requires inflow screens and NMFS approved observers. For beach nourishment projects this can be accomplished by either monitoring the beach or use of observers and screens on the hopper dredge.

3 Use of hopper dredging at Canaveral Navigation Channel will be restricted to those times when there is an urgent need for this type of equipment.

During a meeting between the COE and NMFS in February 1995, it was determined that the impacts of beach nourishment activities along the southeastern U.S. Atlantic coast should also be considered in this biological opinion. Therefore, projects being considered in this consultation include those listed in the Biological Assessment submitted on November 8, 1994, as well as channels south of Canaveral, and beach nourishment activities along the southeastern U.S. Atlantic coast in which hopper dredges may be used. Specific projects which have been considered in ongoing consultations include: Palm Beach Harbor maintenance dredging; the Fort Pierce Harbor entrance channel and turning basin; and the Dade County Beach Erosion Control Project at the northern end of Sunny Isles.

## LISTED SPECIES AND CRITICAL HABITAT

Listed species under the jurisdiction of the NMFS that may occur in channels along the southeastern United States and which may be affected by dredging include:

THREATENED:
(1) the threatened loggerhead turtle - *Caretta caretta*

ENDANGERED:
(1) the endangered right whale - *Eubalaena glacialis*
(2) the humpback whale - *Megaptera novaeangliae*
(3) the endangered/threatened green turtle - *Chelonia mydas*
(4) the endangered Kemp's ridley turtle - *Lepidochelys kempii*
(5) the endangered hawksbill turtle - *Eretmochelys imbricata*
(6) the endangered shortnose sturgeon - *Acipenserbrevirostrum*

Green turtles in U.S. waters are listed as threatened, except for the Florida breeding population which is listed as endangered.

Information on the biology and distribution of these species was given in the 1991 biological opinion, and is incorporated by reference. Channel-specific information has been collected by COE for channels at Morehead City, Charleston, Savannah, Brunswick, Fernandina and Canaveral, and is presented in detail in the COE summary report entitled "Assessment of Sea Turtle

Abundance in Six South Atlantic US Channels" (Dickerson et al., 1994) and in the COE Biological Assessment. New information is included below.

Additional endangered species which are known to occur along the Atlantic coast include the finback (Balaenoptera physalus), the sei (Balaenoptera borealis), and sperm (Physeter macrocephalus) whales and the leatherback sea turtle (Dermochelys coriacea). NMFS has determined that these species are unlikely to be adversely affected by hopper dredging activities.

PROPOSED, THREATENED:
(1) Johnson's seagrass - Halophila johnsonii

According to federal regulations (50 CFR Section 402.10), a conference is required if a planned federal action is likely to jeopardize the continued existence of a proposed species. At this time, NMFS is unable to make a determination on the collective effects of hopper dredging in and adjacent to channels in which Johnson's seagrass occurs. The COE should develop estimates of annual take of seagrass anticipated by projects within Florida's intracoastal waterways within Johnson's seagrass habitat. Consideration of impacts to H. johnsonii should continue on a project-by-project basis until collective impacts have been estimated and/or listing has been finalized.

## ASSESSMENT OF IMPACTS

### Sturgeon

Table 1, taken from the February 6, 1995 draft Shortnose Sturgeon Recovery Plan (NMFS, 1995), gives the current, best available information on the distribution and abundance of shortnose sturgeon. South of the Chesapeake Bay, there is inadequate information to estimate the shortnose sturgeon population size in most rivers. Low abundance estimates have been made for the Ogeechee and Altamaha rivers.

Generally in southern rivers, adult sturgeon remain in estuaries and at the interface of salt and freshwater until late winter, when they move upriver to spawn. Embryos produced tend to remain

in areas of irregular bottom, where they appear to seek cover. Juveniles, like adults, occur primarily at the interface between salt and freshwater. Recent observations suggest that salinity levels greater then seven ppt are harmful (Smith et al., 1992). In the Savannah River, shortnose sturgeon are found over sand/mud substrate in 10-14 m. depths (Hall et al., 1991). Spawning occurs in upstream channels of the Savannah, where the substrate consists of gravel, sand and logs (Hall et al., 1991). Shortnose sturgeon feed on crustaceans, insect larvae, and molluscs (NMFS, 1995).

**Impacts of hopper dredging on sturgeon**

NMFS believes that shortnose sturgeon may be adversely affected by hopper dredging within some channels and seasons. While endangered species observers on hopper dredges have documented the take of Atlantic sturgeon, no take of a shortnose sturgeon has been observed. Sturgeon may be encountered in channels north of Pawles Island, South Carolina, where dredging may be conducted year-round. Winter windows south of Pawles, however, will reduce the period in which shortnose sturgeon may be impinged. Adult sturgeon may occur in estuarine and tidal waters until February, when they migrate upstream to spawn. Salinity ranges favorable to adults and juveniles can exist in inner harbors during fall months. Use of the rigid draghead deflector developed to reduce the likelihood of incidental take of sea turtles by hopper dredges may also reduce the take of shortnose sturgeon. The impacts on small juveniles, larvae, and eggs, by other suction dredge types used upriver, will be considered on a case-by-case basis.

In addition to the possibility of a direct take of sturgeon, maintenance dredging by all dredge types has likely reduced foraging areas within dredged channels, since inter-dredging periods may be too brief to allow forage species to re-establish. Current primary foraging habitat is thought to occur outside of dredged channels.

Shortnose sturgeon are not likely to be affected by beach nourishment activities.

**Sea Turtles**

Precise data regarding the total number of sea turtles in waters of the southeastern U.S. Atlantic are not available. Trends in turtle populations are identified through monitoring of their most accessible life stages on the nesting beaches, where hatchling production and the number of nesting females can be directly measured. Figures 2 through 4 illustrate loggerhead, green and Kemp's ridley nesting trends at regularly monitored nesting beaches.

Index nesting beaches on which data collection methods and effort were standardized were established in Florida in 1989. Over 90 percent of all U.S. loggerhead nests occur in Florida, and over 80 percent of these are within indexed beaches (B. Schroeder, pers comm). During the six years monitored in this standardized manner, illustrated in Figure 2, loggerhead nesting appears to be stable. All green turtle nests in the United States occur in Florida, and most occur on index beaches. The pattern of green turtle nesting shows biennial peaks in abundance, with a generally positive trend during the six years of regular monitoring (Figure 3).

The abundance of ridleys nests in Rancho Nuevo, Mexico, have been increasing since 1987 (Figure 4). Over 1500 nests were observed during the 1994 nesting season, representing the highest nesting year since monitoring was initiated in 1978. While these data need to be interpreted cautiously due to expanded monitoring efforts since 1990, up to 110,000 hatchlings were released from Rancho Nuevo during 1994, compared to 50,000 to 80,000 over the previous five to six years (Byles, pers comm).

Stranding data are generally believed to reflect the nearshore distribution of sea turtles (Figure 5). The use of turtle excluder devices (TEDs) in shrimp trawls is likely responsible for the sharp decrease in strandings after 1990 through a reduction in mortality resulting from incidental capture in shrimp trawls. While TEDs were required seasonally in most areas during much of 1990, compliance was poor until 1991. Since 1991, documented strandings of loggerheads were steady, while green turtle strandings increased in 1994 and ridleys in 1993 and 1994. Factors that may be affecting the distribution and abundance of sea turtles and turtle mortalities (ie. the distribution of

strandings) include: vessel activity, fishery operations, and environmental factors such as storms, temperature changes, and eutrophication events.

The data suggest that green and Kemp's ridley turtle populations may be rising. While this supports cautious optimism, the numbers are well below recovery criteria established in the recovery plans.

**Impacts of hopper dredging on sea turtles**

Channels

NMFS believes that hopper dredging activities in the southeastern United States may adversely affect the endangered Kemp's ridley and Florida green turtles and the threatened loggerhead turtle. While hawksbill turtles likely occur infrequently in ship channels, they may be present during beach nourishment activities in areas near or between hard-bottom reefs.

Past maintenance dredging in the southeastern United States has been demonstrated to adversely affect sea turtles. The biological opinion issued in 1991 in response to the high levels of turtle takes observed, as well as nearby strandings of crushed turtles during hopper dredging in Brunswick and Savannah channels, concluded that continued unrestricted hopper dredging in channels along the southeast region's Atlantic coast could jeopardize the continued existence of listed sea turtles. Takes of 225 sea turtles had been documented since 1980 in southeast channels, including 22 turtles that were alive when found. The COE's strict adherence to the measures included in the 1991 biological opinion, including a prohibition of hopper dredging in Canaveral and seasonal restrictions on hopper dredging from North Carolina through the Canaveral ship channel, has greatly reduced the rate of sea turtle takes by hopper dredges. Only 14 sea turtle takes have been documented in hopper dredges since 1991, including three turtles that were alive when collected.

The COE conducted a comprehensive research program, beginning in 1991, to investigate the occurrence of sea turtles in six southeast channels to determine seasonal abundance, as well as spatial distribution within the channel and within the water column. Monthly surveys were conducted in Canaveral, Kings Bay, Brunswick, Savannah, Charleston, and Morehead City channels. The

Canaveral surveys supplement surveys conducted by NMFS and the COE since 1978.

Briefly, the surveys found the following: In areas where sea turtles occur, moderate to high abundance can be expected when water temperature is greater than or equal to 21 degrees C. Lower abundances were observed when temperatures were less than 16 degrees C. Other workers have observed sea turtles in waters as low as 8 degrees C, sometimes for extended periods (Morreale, pers comm 1993). Loggerheads, primarily adults, were the most abundant turtle captured (n = 645), although some Kemp's ridleys (n = 20) and green turtles (n = 5) were also taken. Juveniles of all species were observed, although only a few juvenile loggerheads were encountered in Canaveral. As documented in previous surveys, the Canaveral ship channel supports aggregations of sea turtles during all months of the year and particularly during cooler winter months (Henwood, 1987; Butler et al., 1987; Henwood and Ogren, 1987). North of Canaveral, turtles were seasonally abundant, with lower numbers from December through February. Recaptures of relocated sea turtles suggest some site fidelity, and the effectiveness of relocation efforts appeared to be related to the distance of relocation. Catch per unit effort (CPUE) in the surveyed channels, for all seasons cumulatively, was: Canaveral, 1.43 turtles per hour; Kings Bay, 0.571 turtles per hour; Brunswick Harbor, 0.489 turtles per hour; Charleston Harbor, 0.206 turtles per hour; and Morehead City Harbor, 0.025 turtles per hour.

As a result of observed CPUE, which were generally lower during cool water periods in the northern channels, the COE has asked NMFS to relax dredging windows to allow year-round dredging north of Pawles Island, South Carolina (which includes the ship channels at Oregon Inlet, Morehead City and Wilmington), and between November and May 31 from Tybee Island, Georgia through Pawles Island (including Charleston, Port Royal and Savannah channels). In recent years, the COE SAD has shown a willingness to cease dredging in channels in which take rates exceed those anticipated, despite the fact that the incidental take level was not approached. Given the COE's conservative record in these channels, and the great reduction in takes observed under current dredging windows, NMFS concurs that some expansion of hopper dredging windows, with requirements for observers and use of the rigid draghead deflector, may result in sea turtle takes, but is

not likely to jeopardize the continued existence of any sea turtle species.

Beach Nourishment Activities

There has been increasing concern regarding the effects of hopper dredging during beach nourishment activities along the southeastern U.S. coast. Anecdotal accounts from divers and biologists suggest that sea turtles may use offshore fine sediment bottoms, as well as areas adjacent to hard bottom reefs, as internesting habitat. Limited observations have noted that at times of extreme drops in temperature, turtles have been observed buried in fine silt covering area reefs, either after beach nourishment or extreme freshwater runoff. Over 174 sea turtles have been observed on the sea surface during 16 right whale aerial surveys conducted between February 27 and March 19, 1995 along line transects within approximately 10 nm of the borrow area off of Jacksonville, Florida, suggesting an abundance of sea turtles in the vicinity of the borrow area. These turtles may be taken by hopper dredges. There has been no documented take of sea turtles during past beach nourishment activities at the borrow areas. However, due to potential impact, one hundred percent observer coverage is necessary for beach nourishment activities during the periods identified on the table. This observer coverage may be subsequently altered upon authorization from NMFS.

NMFS remains concerned that nearshore reefs, which provide foraging habitat and shelter for sea turtles, can be impacted by turbidity caused by dredging. While hopper dredges produce less turbidity than other dredge types, water quality impacts are still likely. State monitoring requirements do not relate directly to light restrictions caused by dredging, which has been shown to impact these ecosystems. Direct mechanical damage to hard bottom reefs, which may also be important turtle habitats, has also been documented (Draft Environmental Assessment prepared for the Second Periodic Nourishment of the Sunny Islands and Miami Beach Segments, Beach Erosion Control and Hurricane Protection Project, Dade County, Florida, January, 1995). The COE has proposed 1:1 mitigation of hard bottom habitat; however, replacement of biological material lost cannot be mitigated. Preventative steps should be identified within dredging contracts for borrow areas near hard-bottom reefs.

Rigid Draghead Deflector

Included within the COE's comprehensive research program, initiated in 1991, was a program to develop a mechanical solution to reduce the take of sea turtles at the dredge draghead. The COE SAD and the Waterways Experiment Station (WES) developed a rigid deflector for attachment to the draghead. This rigid draghead deflector has shown promising results during preliminary tests. The rigid device, similar in principal to the cow catchers developed for trains, is designed to deflect sea turtles encountered during hopper dredging activities. When deployed with mock turtles, the deflector draghead effectively avoided taking 95 percent of the models. According to the terms and conditions of the Incidental Take Statement issued for the 1991 biological opinion, testing of the effectiveness of the rigid deflector draghead in a channel where sea turtles occur present was necessary. NMFS recommended that the COE evaluate the new draghead in September in the Canaveral shipping channel, when juvenile turtles are present, but adults and gravid females are scarce. A supplementary biological opinion regarding the impacts of dredging using the deflector draghead in the Cape Canaveral channel for up to 15 days between September 14 and October 14, 1994 was issued in September 1994.

Although trawl sampling indicates that sea turtles were present in Canaveral at levels observed in previous years, only one sea turtle, a live green turtle, was observed entrained by the dredge. Twenty-one surface sightings of sea turtles were made in the channel, transit area, and at the disposal site. These results supported the mock turtle trials. However, despite the use of the rigid draghead deflector, two green turtle entrainments were documented in the Palm Beach Harbor entrance channel. Takes by a hopper dredge equipped with the deflector were also documented in Brazos Pass, in the Gulf of Mexico. NMFS believes that instruction of private dredge contractors is necessary to improve the performance of the rigid deflector draghead. Additionally, the effectiveness of the draghead may be dependent on the ability of the dredge operator to keep the dredging pumps disengaged when the dragheads are not firmly on the bottom to prevent impingement of sea turtles within the water column. Lastly, flexibility at the draghead is reportedly needed to improve the performance and ease of operation of this mechanical device. Additional assessment and development appears to be needed before the rigid draghead deflector can replace

seasonal restrictions as a method of reducing sea turtle captures during hopper dredging activities.

**Whales**

Right whale

The nearshore waters of northeast Florida and southern Georgia were formally designated as critical habitat for right whales on June 3, 1994 (28793). These waters were first identified as a likely calving and nursery area for right whales in 1984. Since that time, Kraus et al. (1993) have documented the occurrence of 74 percent of all the known mature females from the North Atlantic population in this area. While sightings off Georgia and Florida include primarily adult females and calves, juveniles have also been observed.

Twenty percent of all right whale mortalities observed between 1970 and 1989 were caused by vessel collisions/interactions with right whales. Seven percent of the population exhibit scars indicative of additional, non-lethal vessel interactions (Kraus, 1990). As a result of the potential for interactions between hopper dredges and right whales, the 1991 biological opinion required observers on board dredges operating from December through March in Georgia and northern Florida to maintain surveys for the occurrence of right whales during transit between channels and disposal areas. Continuation of aerial surveys, which had been instituted in Kings Bay, Georgia, was also required. Since January 1994, aerial surveys funded by the COE in association with dredge activities in the southeast have been amplified through the implementation of the right whale early warning surveys. These surveys, funded by COE, as well as the Navy and Coast Guard, are conducted to identify the occurrence and distribution of right whales in the vicinity of ship channels in the winter breeding area, and to notify nearby vessel operators of whales in their path. The COE has been instrumental in NMFS' communications with other federal action agencies regarding the importance of pro-active protection of right whales through a cooperative recovery plan implementation team.

Whales observed on aerial and shipboard surveys are individually identified and counted, cow/calf pairs are recorded, and the movements and distribution of the whales are noted. Dredge speeds are reduced to five knots or less during evening hours or

periods of low visibility for 24 hours after sightings of right whales within 10 nm of the channel or disposal areas.

Data collected during these surveys suggest that right whales are observed off Savannah, Georgia, in December and March, and are relatively abundant between Brunswick, Georgia, south to Cape Canaveral from December through March. During early 1995, a right whale was also observed by shipboard observers off Morehead City, North Carolina (1/10/95, probable right whale).

Humpback whale

Humpback whales occur in waters under U.S. jurisdiction throughout the year. Migrations occur annually between their summer and winter ranges. The summer range for the Western North Atlantic stock includes the Gulf of Maine, Canadian Maritimes, western Greenland, and the Denmark Strait. All humpback whales feed while on the summer range.

The primary winter range includes the Lesser Antilles, the Virgin Islands, Puerto Rico, and the Dominican Republic (NMFS, 1991). In general, it is believed that calving and copulation take place on the winter range. Calves are born from December through March and are about 4 meters at birth. Sexually mature females give birth approximately every two to three years. Sexual maturity is reached between 4 and 6 years of age for females and between 7 and 15 years of age for males. Size at maturity is about 12 meters.

Until recently, humpback whales in the mid- and south Atlantic were considered transients. Few were seen during aerial surveys conducted over a decade ago (Shoop et al., 1982). However, since 1989, sightings of feeding juvenile humpbacks have increased along the coast of Virginia and North Carolina, peaking during the months of January through March in 1991 and 1992 (Swingle et al., 1993). Studies conducted by the Virginia Marine Science Museum (VMSM) indicate that these whales are feeding on, among other things, bay anchovies and menhaden. Researchers theorize that juvenile humpback whales, which are unconstrained by breeding requirements that result in the migration of adults to relatively barren Caribbean waters, may be establishing a winter foraging area in the mid-Atlantic (Mayo, pers comm, 1993). The lack of sightings south of the VMSM study area is a function of

shipboard sighting effort, which was restricted to waters surrounding Virginia Beach, Virginia.

In concert with the increase in whale sightings, strandings of humpback whales have increased between New Jersey and Florida since 1985. Strandings were most frequent during the months of September through April in North Carolina and Virginia waters, and were composed primarily of juvenile humpback whales of no more then 11 meters in length (Wiley et al., 1995). Of the 18 humpbacks for which the cause of mortality was determined, 6 (33 percent) were killed by vessel strikes. An additional humpback had scars and bone fractures indicative of a previous vessel strike that may have contributed to its mortality.

Shipboard observations conducted during daylight hours during dredging activities in the Morehead City Harbor entrance channel during January and February 1995 documented sightings of young humpback whales on at least six days near the channel and disposal area, until the last sighting on January 22, 1995. Three humpback strandings were documented in North Carolina, one each in February, March, and April, suggesting that humpback whales remained within waters of the South Atlantic Division through April.

**Impacts of hopper dredging on whales**

Hopper dredging may adversely affect right and humpback whales, which occur during winter months in the vicinity of dredging projects within the SAD. While dredging itself is not likely to be a problem, the transit of hopper dredges between borrow, channel, and disposal areas is likely to result in increased vessel traffic in the vicinity of humpback and right whales, especially within right whale critical habitat. As discussed above, ship strikes are one of the primary human-caused sources of mortality for both humpback and right whales, and increased vessel traffic may increase the likelihood of whale/vessel interactions. Although whales have been observed in areas of dredge operations, as discussed below, there have been no documented collisions between dredges and whales.

Observers on dredges have documented close approaches between whales and dredges. On February 6, 1988, a right whale reacted to the approach of a hopper dredge within 100 yards by orienting

itself toward the vessel in a defensive profile. On February 28, 1988, during clamshell dredging of Canaveral channel, a right whale remained in the Canaveral channel for a period of about 10 minutes. Fortunately, this took place during daylight hours and when no vessels were transiting the channel. On January 12, 1995, a humpback whale was observed within a quarter of a mile of the dredge at Wilmington channel and resurfaced near the dredge. An approaching humpback on January 13, 1995 was observed ahead of the dredge initially, but resurfaced near the stern after the vessel slowed. Dredging was stopped while the whale, and two other humpbacks nearby, approached within 100 yards, including one passage under the bow. On January 18, still within the Wilmington Harbor channel dredging area, one of a few humpbacks observed feeding surfaced and quickly dove again within 10 meters of the dredge.

NMFS believes that the cooperation of the dredge operators with endangered species observers greatly reduces the chance of whale/dredge interactions. Additional precautions that reduce the likelihood of dredge collisions with endangered whales include: aerial surveys conducted in right whale critical habitat during the breeding season, the adoption by dredge operators of necessary precautions when whales are sighted, and reduction in dredge speed during evening hours or days of limited visibility when whales have been spotted within the previous 24 hours.

## CONCLUSIONS

NMFS concludes that endangered and threatened sea turtles, including the threatened loggerhead (*Caretta caretta*), and endangered Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles, may be adversely affected by hopper dredging of channels and during beach nourishment activities along the U.S. southeast Atlantic coast, but are not likely to be jeopardized under the terms and conditions of the attached Incidental Take Statement. Shortnose sturgeon (*Acipenser brevirostrum*) may be adversely affected by hopper dredging of channels, but are not likely to be jeopardized in rivers of the Southeast Region. Right whales (*Eubalaena glacialis*) and humpbacks (*Megaptera novaengliae*) also may be adversely affected due to increased vessel traffic, but severe

impacts can be avoided through continued cooperation between dredge operators and endangered species observers during the seasons whales may occur in the project area.

## CONSERVATION RECOMMENDATIONS

Pursuant to section 7(a)(1) of the ESA, the following conservation recommendations are made to assist the COE in reducing/eliminating adverse impacts to loggerhead, green, and Kemp's ridley turtles that result from hopper dredging in the southeastern United States. Many of these recommendations have been discussed and agreed upon at the recent COE/NMFS meeting in St. Petersburg, Florida.

1. The COE should continue to investigate possible modifications to existing dredges which might reduce or eliminate the take of sea turtles. The effectiveness of the rigid draghead deflectors should continue to be evaluated.

2. Spring and fall surveys are necessary in the Canaveral shipping channel to identify sea turtle temporal and spatial movement patterns if hopper dredging will be needed regularly for the Canaveral channel in the future. Telemetry using depth recorders may be needed to obtain information on water column use.

3. Spatial distribution of sea turtles taken in COE trawl surveys of southeast ship channels appeared to be non-random. Additional investigation into the characteristics of "preferred" sites may provide information to expand dredging windows in channel areas adjacent to these areas of greater abundance.

4. The COE should provide NMFS with a list of inshore and offshore borrow areas along the southeastern U.S. Atlantic in which hopper dredges are likely to be used. Frequency of anticipated beach nourishment activities should be identified as accurately as possible.

5. The COE should summarize information regarding borrow areas in which hopper dredges may be deployed. Information regarding the biological resources found at each borrow area

should be listed to identify the possible suitability of the area for foraging sea turtles.

6. The COE should evaluate the collective impact of all dredging projects within the Florida intracoastal waterways on Johnson's seagrass. A summary of anticipated projects and estimates of annual seagrass take levels should be developed to allow NMFS to provide a comprehensive conference or consultation.

7. NMFS, based on the recommendations of Griffen (1974), has recommended water column sediment load deposition rates of no more then 200 $mg/cm^2/day$, averaged over a seven day period to protect coral reefs and hard bottom communities, rather than use of only state standards.

## INCIDENTAL TAKE STATEMENT

Section 7(b)(4) of the Endangered Species Act (ESA) requires that when a proposed agency action is found to be consistent with section 7(a)(2) of the ESA, and the proposed action may incidentally take individuals of listed species, NMFS will issue a statement that specifies the impact of any incidental taking of endangered or threatened species. It also states that reasonable and prudent measures, and terms and conditions to implement the measures, be provided that are necessary to minimize such impacts. Only incidental taking resulting from the agency action, including incidental takings caused by activities approved by the agency, that are identified in this statement and that comply with the specified reasonable and prudent measures, and terms and conditions, are exempt from the takings prohibition of section 9(a), pursuant to section 7 of the ESA.

Based on results of previous hopper dredging activities in southeastern U.S. channels, new information regarding Kemp's ridley and green sea turtle abundance, and expanded dredging windows and appended monitoring of beach nourishment activities in the South Atlantic Division, NMFS anticipates that future hopper dredging activities may result in the injury or mortality of loggerhead, Kemp's ridley, green, and hawksbill turtles. Therefore, a low level of incidental take, and terms and conditions necessary to minimize and monitor takes, is established. The documented incidental take, by injury or mortality, of seven (7) Kemp's ridleys, seven (7) green turtles, two (2) hawksbills, twenty (20) loggerhead turtles, and five (5) shortnose sturgeon is set pursuant to section 7(b)(4) of the ESA. This take level represents the total authorized take per year for hopper dredging in the Atlantic projects of the South Atlantic Division (SAD).

To ensure that the specified levels of take are not exceeded early in any project, the COE should reinitiate consultation for any project in which more than one turtle is taken in any day, or once five or more turtles are taken. The Southeast Region, NMFS, will cooperate with the COE in the review of such incidents to determine the need for developing further mitigation measures or to terminate the remaining dredging activity. Formal consultation must be reinitiated when 75% of the authorized incidental take is reached. The authorization for these incidental takes expires on August 31, 2000.

Section 7(b)(4)(c) of the ESA specifies that in order to provide an incidental take statement for an endangered or threatened species of marine mammal, the taking must be authorized under section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA). Since no incidental take in the Atlantic Region has been authorized under section 101(a)(5) of the MMPA, no statement on incidental take of listed right whales is provided.

The reasonable and prudent measures that NMFS believes are necessary to minimize the impact of hopper dredging in the southeastern United States have been discussed with the COE. The following terms and conditions are established to implement these measures and to document the incidental take should such take occur. It is anticipated that beach nourishment will not occur year-round, due to environmental protections instituted by other agencies.

1. Regular maintenance activity in Canaveral Harbor shall not be conducted with a hopper dredge. A hopper dredge should be considered only under emergency conditions when no other type of dredge can be used to remove hazardous shoaling in an expedited timeframe. Separate, specific Section 7 consultations must be conducted for all dredging activities in the Canaveral ship channel that may require the use of a hopper dredge. These consultations will be accelerated if warranted by emergency conditions.

2. One hundred percent inflow screening is required, and 100 percent overflow screening is recommended when sea turtle observers are required on hopper dredges in areas and seasons in which sea turtles may be present (see table below). If conditions disallow 100 percent inflow screening, inflow screening can be reduced but 100 percent overflow screening is required, and an explanation must be included in the preliminary dredging report (see 6, below).

3. The sea turtle deflecting draghead is required for all hopper dredging during the months that turtles may be present, unless a waiver is granted by the COE SAD in consultation with NMFS.

4. Beach observers cannot be used in place of shipboard observers for hopper dredging of borrow areas unless the COE

can demonstrate that the volume of sand deposited on beaches will not preclude observation and identification of turtles or turtle parts.

5. To prevent impingement of sea turtles within the water column, every effort should be made to keep the dredge pumps disengaged when the dragheads are not firmly on the bottom.

6. Reporting: A preliminary report summarizing the results of the dredging and the sea turtle take must be submitted to the COE and NMFS within 30 working days of completion of any given dredging project. An annual report (based on either calendar or fiscal year) must be submitted to NMFS summarizing hopper dredging projects, documented sea turtle and sturgeon incidental takes, and whale sightings.

7. The COE's continued participation in the Right Whale Early Warning System is necessary. Dredging within right whale critical habitat from December through March must follow the protocol established within the Early Warning System.

8. NMFS requires monitoring by endangered species observers with at-sea large whale identification experience to conduct daytime observations for whales between December 1 and March 31, when humpback and right whales occur in the vicinity of channels and borrow areas, north of Cape Canaveral. Monitoring will be 100% for the first year of the biological opinion, unless subsequently altered upon authorization from NMFS. During daylight hours, the dredge operator must take necessary precautions to avoid whales. During evening hours or when there is limited visibility due to fog or sea states of greater than Beaufort 3, the dredge must slow down to 5 knots or less when transitting between areas if whales have been spotted within 15 nm of the vessel's path within the previous 24 hours. South of Cape Canaveral, surveys for whales should be conducted by endangered species observers during the intervals between dredge spoil monitoring.

9. The seasonal observer requirements under these terms and conditions are listed on the following table. North of the St. Johns River, in Florida, endangered species observers on hopper dredges within nearshore and riverine areas must also monitor for shortnose sturgeon impingements.

# RESTRICTIONS AND MONITORING REQUIREMENTS FOR HOPPER DREDGING ACTIVITIES IN THE ATLANTIC WATERS OF THE COE SOUTH ATLANTIC DIVISION

| AREA | WHALE MONITORING for beach nourishment, navigation channels, and transit | SEA TURTLE MONITORING: NAVIGATION CHANNELS | | SEA TURTLE MONITORING: BEACH NOURISHMENT ACTIVITIES | |
|---|---|---|---|---|---|
| | | WINDOWS | MONITORING | WINDOWS | MONITORING[1] |
| North Carolina to Pawles Island, SC (includes channels at Oregon Inlet, Morehead City and Wilmington) | 100% dedicated daytime whale observer coverage between 1 Dec and 31 Mar. Monitoring by sea turtle observer between 1 Apr and 30 Nov. | Year Round | 100% observer monitoring from 1 Apr - 30 Nov | Year Round | 100% observer monitoring from 1 Apr - 30 Nov |
| Pawles Island, SC to Tybee Island, GA (includes channels at Charleston, Port Royal and Savannah) | 100% dedicated daytime whale observer coverage between 1 Dec and 31 Mar. Monitoring by sea turtle observer between 1 Apr - 30 Nov. | 1 Nov - 31 May | 100% observer monitoring from 1 Nov - 30 Nov and 1 Apr - 31 May | Year Round | 100% observer monitoring from 1 Apr - 30 Nov |
| Tybee Island, GA to Titusville, FL (includes channels at Brunswick, Kings Bay, Jacksonville, St. Augustine, and Ponce de Leon Inlet) | Aerial surveys in right whale critical habitat, 1 Dec thru 31 Mar. 100% dedicated daytime whale observer coverage between 1 Dec and 31 Mar. | 1 Dec - 15 Apr | 100% observer monitoring from 1 Apr - 15 Apr | Year Round | 100% observer monitoring from 1 Apr - 15 Dec |
| Titusville, FL to Key West, FL (includes channels at West Palm Beach, Miami and Key West) | Whale observations are not necessary beyond those conducted between monitoring of dredge spoil. | Year Round | 100% observer monitoring year round | Year Round | 100% observer monitoring year round |

[1] 100% of the dredge material must be screened and 100% of the screened material must be observed.

## REFERENCES


Butler, R. W., W. A. Nelson and T. A. Henwood. 1987. A trawl survey method for estimating loggerhead turtle, Caretta caretta, abundance in five eastern Florida channels and inlets. Fishery Bulletin, Vol. 85, No. 3.

Byles, R. 1994 Personal Communication. U.S. Fish and Wildlife Service.

Dickerson, D.D., K.J. Reine, D.A. Nelson and C.E. Dickerson. 1994. Assessment of Sea Turtle Abundance in Six South Atlantic U.S. Channels. Report for the US Army Corps of Engineers, October, 1994.

Griffin, G. 1974. Case history of a typical dredge-fill project in the northern Florida Keys-effect s on water clarity, sedimentation rates and biota. Publication 33, Harbor Branch Foundation. 67 pp.

Hall, W.J., T.I.J. Smith, and S.D. Lamprecht. 1991. Movements and habitats of shortnose sturgeon Acipenser brevirostrum in the Savannah River. Copeia (3) 695-702.

Henwood, T. A. 1987. Movements and seasonal changes in loggerhead turtle, Caretta caretta, aggregations in the vicinity of Cape Canaveral, Florida (1978-84). Biol. Conserv. Vol. 40, No. 3: 191-202.

Henwood, T. A. and L. H. Ogren. 1987. Distribution and migrations of immature Kemp's ridley turtles (Lepidochelys kempii) and green turtles (Chelonia mydas) off Florida, Georgia and South Carolina. Northeast Gulf Science Vol. 9, No. 2: 153-159.

Kraus, S.D., R.D. Kenney, A.R. Knowlton, and J.N. Ciano. 1993. Endangered Right Whales of the Southwestern North Atlantic. Contract Report No. 14-35-0001-30486 for Minerals Management Service, March 1993.

Kraus, S.D. 1990. Rates and potential causes of mortality in North Atlantic right whales (Eubalaena glacialis). Marine Mammal Science Vol 6; No. 4: pp 278-291.

Mayo, C. 1993 Personal Communication. Center for Coastal Studies, Provincetown, MA.

Morreale, S.J. 1993 Personal Communication. Cornell University, Ithaca, NY.

National Marine Fisheries Service. 1995. Technical Draft Recovery Plan for the Shortnose Sturgeon (Acipenser brevirostrum). Prepared by the Shortnose Sturgeon Recovery Team for NMFS. February 6, 1995 Draft.

National Marine Fisheries Service 1991. Recovery Plan for the Humpback Whale (Megaptera novaeangliae). Prepared by the Humpback Whale Recovery Team for NMFS, Silver Spring, Maryland. 105 pp.

Schroeder, B. A. 1995 Personal Communication. Florida Department of Environmental Protection, Tequesta, FL.

Shoop, C., T. Doty and N. Bray. 1982. A characterization of marine mammals and turtles in the mid- and north-Atlantic areas of the U.S. outer continental shelf: Final Report, December 1982. Univ. Rhode Island, Kingston.

Smith, T.I.J., E. Kennedy and M.R. Collins. 1992. Identification of critical habitat requirements of shortnose sturgeon in South Carolina. Final Report to the U.S. Fish and Wildlife Service. Project No. AFS-17.

Swingle, M., S. Barco, T. Pitchford, W. McLellan and D.A.Pabst. 1993. The occurrence of foraging juvenile humpback whales (Megaptera novaeangliae) in Virginia Coastal Waters. Marine Mammal Science, Vol 9; No.3:pp 309 - 315.

Thayer, Vicki, 1995 personal communication. NMFS Beaufort Lab.

Wiley, D.N., R. A. Asmutis, T.D. Pitchford, and D.P. Gannon. 1994. Stranding and mortalities of humpback whales, Megaptera novaeangliae, in the mid-Atlantic and southeast United States, 1985-1992. Fishery Bulletin 93: 196-205 (1995).

DESCRIPTION/SPECIFICATIONS

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CEGS-01300 (December 1994)

Includes Text Adjustment change 1 (coding) (March 1995)

SECTION 01300

SUBMITTAL PROCEDURES

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PART 1 GENERAL

1.1 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

1.1.1 Government Approved (GA/D or GA/F Level)

Governmental approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the contract clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings." GA/D indicates review by the designer. GA/F indicates review by the field office.

1.1.2 Information Only

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the contract clause referred to above.

1.2 APPROVED SUBMITTALS

The Contracting Officer's approval of submittals shall not be construed as a complete check, but will indicate only that the general method of construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the CQC requirements of this contract is responsible for dimensions, the design of adequate connections and details, and the satisfactory construction of all work. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

1.3 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, a notice in accordance with the contract clause "Changes" shall be given promptly to the Contracting Officer.

1.4 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 GENERAL

The Contractor shall make submittals as required by the specifications. The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections. Units of weights and measures used on all submittals shall be the same as those used in the contract drawings. Submittals shall be made in the respective number of copies and to the Contracting Officer. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) representative and each item shall be stamped, signed, and dated by the CQC representative indicating action taken. Proposed deviations from the contract requirements shall be clearly identified. Submittals shall include items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list); certifications; warranties; and other such required submittals. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby. Samples remaining upon completion of the work shall be picked up and disposed of in accordance with manufacturer's Material Safety Data Sheets (MSDS) and in compliance with existing laws and regulations.

3.2 SUBMITTAL REGISTER (ENG FORM 4288)

At the end of this section is one set of ENG Form 4288 listing items of equipment and materials for which submittals are required by the specifications; this list may not be all inclusive and additional submittals may be required. Columns "d" through "q" have been completed by the Government; the Contractor shall complete columns "a" and "r" through "t" and submit the forms to the Contracting Officer for approval within 30 calendar days after Notice to Proceed. The approved submittal register will become the scheduling document and will be used to control submittals throughout the life of the contract. The submittal register and the progress schedules shall be coordinated.

3.3 SCHEDULING

Submittals covering component items forming a system or items that are interrelated shall be scheduled to be coordinated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled. Adequate time (a minimum of 30 calendar days exclusive of mailing time) shall be allowed and shown on the register for review and approval. No delay damages or time extensions will be allowed for time lost in late submittals.

3.4 TRANSMITTAL FORM (ENG FORM 4025)

The sample transmittal form (ENG Form 4025) included in Attachment 1 of Section 00800 shall be used for submitting both Government approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms will be furnished to the Contractor. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. Special care shall be exercised to ensure

proper listing of the specification paragraph and/or sheet number of the contract drawings pertinent to the data submitted for each item.

## 3.5 SUBMITTAL PROCEDURE

Submittals shall be made as follows:

### 3.5.1 Procedures

The Contractor shall be responsible for the scheduling and control of all submittals. The Contractor is responsible for confirming that the submittal register includes all submittals required by the contract documents.

In addition to those items listed on ENG Form 4288, the Contractor will furnish submittals for any deviation from the plans or specifications. The scheduled need dates must be recorded on the document for each item for control purposes and critical items must be tied to the contractor's approved schedule where applicable.

The Contractor will submit to the Contracting Officer for approval a minimum of five copies of all GA/D or GA/F level submittals. Three copies of all FIO level submittals will be provided. The number of copies of submittals specified in this portion of the contract shall be complied with in lieu of four copies as specified by FAR 52.236-21.

For those contracts requiring Network Analysis System (NAS), the Contractor will schedule on the NAS critical items of equipment submittals and procurement activities which will, or have the potential to, significantly impact project completion. The inclusion or exclusion of critical items shall be subject to the approval of the Contracting Officer.

Where ENG Form 4025 must be submitted prior to approval of the Construction Progress Schedule, the Contractor shall submit an initial annotated ENG Form 4288 upon which dates for submittal, approval and delivery of procurement items shall be included for the first 60 days of the work. Upon approval of the Construction Progress Schedule, or no later than 60 days after Notice to Proceed, the Contractor shall submit final annotated copies of ENG Form 4288. Dates shall be coordinated with the approved Construction Progress Schedule to logically interface with the sequence of construction. Critical item numbers will be shown on the listing if NAS is required.

Furnishing the schedule shall not be interpreted as relieving the Contractor of his obligation to comply with all the specification requirements for the items on the schedule. Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. The Contractor shall furnish a list each 30 days of all submittals on which either Government's or Contractor's action is past due. He shall also furnish revised due dates in those cases when the original submittal schedule is no longer realistic. This monthly list of delayed items shall also be annotated by the Contractor to show what corrective action he is taking with regard to slippages in submittal schedule which are attributable to actions by him, his subcontractors, or suppliers.

The Contractor shall provide a complete updated submittal register indicating the current status of all submittals when requested by the Contracting Officer in order to assure himself the schedule is being maintained.

The Contractor shall certify that each submittal is correct and in strict conformance with the contract drawings and specifications. All submittals not subject to the approval of the Contracting Officer will be submitted for information purposes only.

No Corps of Engineers action will be required prior to incorporating these items into the work, but the submittal shall be furnished to the COR not less than 2 weeks prior to procurement of Contractor certified material, equipment, etc.

These Contractor approved submittals will be used to verify that material received and used in the job is the same as that described and approved and will be used as record copies. All samples of materials submitted as required by these specifications shall be properly identified and labeled for ready identification, and upon being certified by the Contractor and reviewed by the Contracting Officer, shall be stored at the site of the work for job site use until all work has been completed and accepted by the Contracting Officer. Delegation of this approval authority to Contractor Quality Control does not relieve the Contractor from the obligation to conform to any contract requirement and will not prevent the Contracting Officer from requiring removal and replacement of construction not in contract conformance; nor does it relieve the Contractor from the requirement to furnish "samples" for testing by the Government Laboratory or check testing by the Government in those instances where the technical specifications so prescribe.

Contractor certified drawings will be subject to quality assurance review by the Government at any time during the duration of the contract. No adjustment for time or money will be allowed for corrections required as a result of noncompliance with plans and specifications.

Submittals Requiring Government Approval (GA/D Level or GA/F Level). Where the review authority is designated to the Government, the Contractor is required to sign the certification on ENG Form 4025 in the box beside the remarks block in Section I. The Government will code the items in block h and sign the approval action block in Section II as the approving authority.

Operating and Maintenance Instructions. Six complete sets of instructions containing the manufacturer's operating and maintenance instructions for each piece of equipment shall be furnished. Each set shall be permanently bound and shall have a hard cover. One complete set shall be furnished at the time test procedures are submitted. Remaining sets shall be furnished before the contract is completed. The following identification shall be inscribed on the covers: The words "OPERATING AND MAINTENANCE INSTRUCTIONS," name and location of the facility, name of the Contractor, and contract number. Fly sheets shall be placed before instructions covering each subject. Instruction sheets shall be approximately 8-1/2 by 11 inches, with large sheets of drawings folded in. Instructions shall include but are not limited to:

(1) System layout showing piping, valves and controls;

(2) Approved wiring and control diagrams;

(3) A control sequence describing startup, operation and shutdown;

(4) Operating and maintenance instructions for each piece of equipment, including lubrication instructions and troubleshooting guide; and

(5) Manufacturer's bulletins, cuts and descriptive data; parts lists and recommended parts.

3.5.2 Deviations

For submittals which include proposed deviations requested by the Contractor, the column "variation" of ENG Form 4025 shall be checked. The Contractor shall set forth in writing the reason for any deviations and annotate such

deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

3.6 CONTROL OF SUBMITTALS

The Contractor shall carefully control his procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

3.7 GOVERNMENT APPROVED SUBMITTALS

Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so stamped and dated. Four copies of the submittal will be retained by the Contracting Officer and one copy of the submittal will be returned to the Contractor.

3.8 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Approval of the Contracting Officer is not required on information only submittals. The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so prescribe.

3.9 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements shall be similar to the following:

CONTRACTOR

(Firm Name)

_____ Approved

_____ Approved with corrections as noted on submittal data and/or attached sheets(s).

SIGNATURE: _____

TITLE: _____

DATE: _____

-- End of Section --

| SUBMITTAL REGISTER (ER 415 1-10) | | | | | | | | | | | | | | | | | | | | Contract No. | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| TITLE AND LOCATION | | | | Maint Dredging Entrance Channel | | | | | | | | | | | CONTRACTOR | | | | | Specification Section | | | | | |
| | | | | Savannah Harbor, GA | TYPE OF SUBMITTAL | | | | | | | | | | CLASSIFICATION | | | CONTRACTOR SCHEDULE DATES | | | CONTRACTOR ACTION | | | GOVERNMENT ACTION | | |
| ACTIVITY NO. | TRANSMITTAL NO. | ITEM NO. | SPECIFICATION PARAGRAPH NUMBER | DESCRIPTION OF ITEM SUBMITTED | DATA | DRAWINGS | INSTRUCTIONS | SCHEDULES | STATEMENTS | REPORTS | CERTIFICATES | SAMPLES | RECORDS | O & M MANUALS | INFORMATION ONLY | GOVERNMENT APPROVED | REVIEWER | SUBMIT | APPROVAL NEEDED BY | MATERIAL NEEDED BY | CODE | DATE | SUBMIT TO GOVERNMENT | CODE | DATE | REMARKS |
| a. | b. | c. | d. | e. | f. | g. | h. | i. | j. | k. | l. | m. | n. | o | p. | q. | r. | s. | t. | u | v. | w. | x. | y. | z. | aa. |
| | | | 02100-4.1 | Dredging and Disposal Plan | | | | X | | | | | | | | X | | | | | | | | | | |
| | | | 02100-7.5.3 | Ocean Disposal Records | | | | | | | | | X | | X | | | | | | | | | | | |
| | | | 02100-9.4.2 | Certification Statement | | | | | | | X | | | | X | | | | | | | | | | | |
| | | | 02100-14.6 | Records/Veri Hopper Loadmeter Sys | | | | | X | | | | | | X | | | | | | | | | | | |
| | | | 02100-20. | Progress Chart | | | | X | | | | | | | | X | | | | | | | | | | |
| | | | 02100-21. | Mate's Log | | | | | | X | | | | | X | | | | | | | | | | | |

# SECTION 01502

# GENERAL CONTRACT REQUIREMENTS

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17. WEATHER CONDITIONS

1. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (SEP 2000 SAS): Dredging shall commence no sooner than 15 December 2004 in either Savannah Harbor or Brunswick Harbor depending on conditions prior to issuance of NTP. Dredging in the other channel may commence at any time thereafter. The Contractor will be required to commence work under this contract after acknowledgement of receipt of Notice to Proceed, to prosecute said work diligently and to complete the entire work ready for use not later than 1 March 2005. Should the total quantity of material to be paid for actually removed under the contract exceed the limit established in clause entitled VARIATIONS IN ESTIMATED QUANTITIES SUBDIVIDED ITEMS additional time will be allowed at the rate of 30 calendar days for each 350,000 cubic yards in excess of the established limit. The time stated for completion shall include final cleanup of the premises.

2. OMITTED

3. CONTRACTOR QUALITY CONTROL (JAN 1994 SAS):

The Contractor shall provide and maintain an effective quality control program that complies with clause INSPECTION OF CONSTRUCTION (FAR 52.246-12) of SECTION 00800.

3.1 The Contractor shall establish a quality control system to perform sufficient inspection of all items of work, including that of his subcontractors, to ensure conformance to applicable specifications and drawings with respect to the materials, workmanship, construction, finish functional performance, and identification. This control shall be established for all dredging except where the technical provisions of the contract provide for specific Government control by inspections or other means. The Contractor's control system shall specifically include the surveillance required in the technical provisions of the contract specifications.

3.2 The Contractor's quality control system is the means by which he assures himself that his dredging complies with the requirements of the contract plans and specifications. The controls shall be adequate to cover all dredging operations and should be keyed to the proposed dredging sequence.

3.3 The Contractor's job supervisory staff may be used for quality control, supplemented as necessary by additional personnel for surveillance or special technicians to provide capability for the controls required by the technical provisions of the specifications.

3.4 The Contractor's Quality Control System shall be organized with a chief and supplemental personnel as necessary to perform adequate quality control of the various provisions of the specifications:

3.4.1 The chief shall be:

3.4.1.1 On the site at all times during construction.

3.4.1.2 Employed directly by the Contractor with no other assigned duties.

3.4.1.3 Independent of the Contractor's field organization.

3.4.1.4 Responsible only to the Contractor's top management.

3.4.1.5 Have a minimum of 5 years experience in related work.

3.4.2 Supplemental Personnel:

3.4.2.1 May be taken from Contractor or subcontractor supervisory personnel.

3.4.2.2 May have duties other than quality control.

3.4.2.3 Shall be of sufficient number, experience and expertise to perform adequate quality control.

3.5 After the contract is awarded and before dredging operations are started, the Contractor shall meet with the Contracting Officer, or his representative, and discuss quality control requirements. The meeting shall develop mutual understanding relative to details of the system, including the forms to be used for recording the quality control operations, inspections, administration of the system, and the interrelationship of Contractor and Government inspection.

3.6 Unless specifically authorized by the Contracting Officer, no dredging shall be started until the Contractor's quality control plan is approved.

3.7 All compliance inspections shall be recorded on the form Daily Contractor Quality Control Report (Attachment 1 to Section 00800) and/or the Daily Contractor Quality Control Report for Dike Construction (Attachment 1 to Section 00800) as appropriate, including but not limited to the specific items required in each technical section of the specifications. This form, to include records of corrective action taken, shall be furnished to the Government as required by the Contracting Officer.

3.8 If recurring deficiencies in an item or items indicate that the quality control system is not adequate, such corrective actions shall be taken as directed by the Contracting Officer.

4. PROGRESS PAYMENTS (JUN 1982 OCE) Progress payments made pursuant to the clause PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS of Section 00700 for any item of work in the Schedule (Section 00010) shall be based on the contract unit price or lump sum amount set forth in the Schedule for that item of work. If the amount of the unit price or lump sum bid for any item of work is in excess of 125 percent of the Government estimate for such item, the Contracting Officer may require the Contractor to produce cost data to justify the price of the bid item. Failure to justify the bid item price to the satisfaction of the Contracting Officer may result in payment of an amount equal to 125 percent of the Government estimate for such bid item upon completion of work on the item and payment of the remainder of the bid item price upon final acceptance of all contract work. With the possible exception of progress payments for mobilization and demobilization, all remaining invoices will be due by the third day of each month. (DAEN-PRZ/CWO-C, 30 June 1980, EC 715-2-31 amended 28 Jun 82.)

5. DATUM AND BENCHMARKS

5.1 Brunswick Harbor: The plane of reference of mean lower low water as used in these specifications is that determined by the following benchmarks for Brunswick Harbor:

| Name | Description | Elevation above MLLW |
|---|---|---|
| BM Tidal 3 | Standard disk set flush in sidewalk Near NW corner of St. Simons pier | 13.49 |
| BM-Tidal 5 | Standard disk set in southern end of Sidewalk in southern end parking area Between casino and Chamber of Commerce/ Library | 13.98 |

Points for the centerline of the Brunswick Harbor entrance channel are as follows:

| Station | X | Y |
|---|---|---|
| 14+464.77 | 887175.6 | 404161.2 |
| 4+272.49 | 893277.5 | 412325.1 |
| -6+645.75B | 903836.7 | 409548.0 |
| -14+000B | 910008.98 | 405549.21 |
| -46+000B | 936864.54 | 388148.28 |
| -56+500B | 945677.01 | 382439.11 |

5.2 Savannah Harbor: The plane of reference of mean lower low water as used in these specifications is that determined by the following benchmarks for Savannah Harbor:

| Name | Description | Elevation above MLLW |
|---|---|---|
| BM 5 | A standard disk set flush in a concrete post south of concrete parking lot for Savannah Bar Pilots Residence | 12.75 |
| BM N 323 1974 | Std. Disk set 0.1 foot below ground near base of a 100 foot high radio tower in Fort Pulaski National Monument | 10.08 |

6. PLANT (JUN 1984 SAS)

6.1 The Contractor agrees to keep on the job sufficient plant to meet the requirements of the work. The plant shall be in satisfactory operating condition and capable of safely and efficiently performing the work as set forth in the specifications and the plant shall be subject to inspection by the Contracting Officer at all times. The plant listed on the Contractor's Plant Data Sheet (Attachment 1 to Section 00800), is the minimum which the Contractor agrees to place on the job unless otherwise determined by the Contracting Officer, and its listing thereon is not to be construed as an agreement on the part of the Government that it is adequate for the performance of the work.

6.2 All scows must be kept in good condition, the coamings repaired and the pockets provided with proper doors or appliances to prevent leakage of material.

6.3 All pipelines for hydraulic machines must be kept in good condition at all times and any leaks or breaks along their length must be promptly and properly repaired.

6.4 No reduction in the capacity of the plant employed on the work shall be made except by written permission of the Contracting Officer. The measure of the "capacity of the plant" shall be its actual performance on the work to which these specifications apply.

6.5 In the event of collision, fire, major breakdown or any other action preventing continuation of dredging operations for a period of more than 48 hours which is anticipated to continue for a period of 30 days or more, additional dredging plant shall be delivered as required by paragraph COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK. In the event the additional plant, as directed by the Contracting Officer, is not delivered and placed in operation within the allowable 30 days, the contract will be terminated under the clause DEFAULT (FIXED-PRICE CONSTRUCTION) (FAR 52.249-10) of Section 00700.

6.6 For hopper dredges and dump scows, the Contractor shall maintain all seals on bottom dump doors and on split hulls to prevent leakage of dredged material from the hopper.

6.7 Approved plant includes only crane, bucket, and dipper dredges, scows, bottom dump barges, pipeline, hopper dredges, and similar equipment. Dragging I-beam, plow, or similar devices is not approved.

7. OMITTED

8. NAVIGATION AIDS AND PERMITS (MAR 1978 SAS)

8.1 Navigation Aids: Navigation aids located within or near the areas required to be dredged will be removed, if necessary, by the U.S. Coast Guard in advance of dredging operations. The Contractor shall not remove, change the location of, obstruct, willfully damage, make fast to, or interfere with any aid to navigation. The Contracting Officer will request the U.S. Coast Guard to relocate the aids if it is determined that they will interfere with the dredging process. Should the Coast Guard determine that they cannot respond to the Contracting Officer's request, the Contracting Officer may direct the Contractor to remove the navigation aid(s).

8.2 Dredging Aids: Dredging aid markers and lights shall not be colored or placed in a manner that they will obstruct or be confused with navigation aids.

8.3 Coast Guard Permits: The responsibility for maintaining and operating the job site installations and vessels in accordance with applicable law rests with the Contractor.

9. SIGNAL LIGHTS (AUG 1984 SAS) In accordance with Navigation Rules, International-Inland COMDTINST M16672.2, the Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges and vessels engaged in laying cables or pipes or in submarine or bank protection operations, lights to be displayed on dredge pipeline and day signals to be displayed by vessels of

more than 65 feet in length moored or anchored in a fairway or channel and the passing by other vessels or floating plant working in navigable channels, as set forth in Commandant, U.S. Coast Guard Instruction M16672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 33 CFR 81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland) as applicable.

10. NOTICE TO MARINERS (APR 1984 SAS) Should the Contractor, during dredging operations, encounter any objects on the channel bottom which could be a hazard to navigation, he will notify the Contracting Officer and the U.S. Coast Guard Marine Safety Office immediately as to the location of said object and any other pertinent information necessary ~~for the Contracting Officer to~~ so that the Coast Guard Marine Safety Office can put out a Notice to Mariners. The Contractor is to furnish a description of said object, the latitudes and longitudes of the reported object, and any other pertinent information necessary to alert shippers in the area. The U.S. Coast Guard Marine Safety Office telephone number is (912) 652.4353.

11. COAST GUARD CERTIFICATION OF PLANT (APR 1984 SAS) The Contractor shall furnish the Contracting Officer sufficient evidence that the Contractor's floating plant (or self-propelled dredge) has proper and necessary U.S. Coast Guard certification as may be applicable under one or more of the following laws and/or regulations: steam (or motor) vessels, cargo and miscellaneous 46 U.S.C. 391(b), Inland Water Rules 46 CFR 7, coastwise vessels and load line 46 U.S.C. 88, or certificated - Oceans (load line exemption).

12. ADVANCE NOTICE REQUIREMENT (JUN 1984 SAS) The Contractor shall give the Contracting Officer 15 days' written notice of the date he plans to complete work in each acceptance section in order that before dredging surveys for the next area of assignment may be made sufficiently in advance of the Contractor's operations.

13. SURVEILLANCE OF OCEAN DISPOSAL BY UNITED STATES COAST GUARD (MAR 1992 SAV)

13.1 Under the Marine Protection, Research and Sanctuary Act of 1972 and the Environmental Protection Agency's Final Ocean Dumping Regulations and Criteria (Federal Register, Vol. 38, No. 198 dated 15 October 1972), the Coast Guard has the responsibility for the surveillance of ocean dumping.

13.2 The Contractor shall notify the local Coast Guard Captain of the Port, at least 5 days prior to the first ocean disposal in each harbor. The notification will be by certified mail with a copy to the Contracting Officer. The following information shall be included in the notification letter:

13.2.1 Project designation, Corps of Engineers' contract number and name, and Contractor's address and telephone number.

13.2.2 Port of departure.

13.2.3 Location of ocean disposal area.

13.2.4 Quantity of material to be deposited in ocean.

13.2.5 Schedule for ocean disposal, giving date and time proposed for first ocean disposal.

13.2.6 Name of vessel or tugboat and barge.

13.3 The Coast Guard may require Coast Guard personnel to be onboard the tow or dump vessel during complete cycles of loadings, travel and disposal in the ocean. The Coast Guard personnel will monitor the disposal of the

material and obtain any necessary dredged material samples. Meals as normally provided to the crew will be served to the Coast Guard personnel onboard. Likewise, quarters will be provided for Coast Guard personnel if the dump operation requires two or more continuous shifts.

13.4 Any directions as to the Contractor's method of operation will be channeled through the Contracting Officer or his authorized representative.

14. COMPLIANCE WITH APPLICABLE NAVIGATION RULES AND REGULATIONS, MARINE EQUIPMENT (SEP 1979 SAD)

14.1 The Contractor shall ascertain that all vessels utilized in project operations consequent to this project are commanded, equipped, navigated and/or operated so as to be in strict compliance with the general regulations of the Department of the Army and of the Coast Guard, including applicable section, safety, environmental and navigational rules and regulations of the Code of Federal Regulations (CFR), parts 33 and 46.

14.2 Installations as may be placed by the Contractor on or over the seabed of the work area, i.e., pipeline, pipeline risers and booster stations are obstructions or structures in accordance with Title 33 CFR Subpart 67.01. Such installations or portions thereof, are subject to applicable regulations set forth in Title 33 CFR, parts 64, 66, and 67.

14.3 The responsibility for notifying Commander, Seventh Coast Guard District, per Title 33 CFR subpart 67.40, and the responsibility of securing necessary installation approvals therefrom, rests with the Contractor. All further responsibility for maintaining and operating his job site installations and vessels in accordance with applicable law rests with the Contractor.

15. OMITTED

16. CERF IMPLEMENTATION (JUL 1992 OCE) If the work specified in this contract is performed by a hopper dredge(s), the owner must have an active Basic Ordering Agreement (BOA) for the hopper dredge(s) on file with the U.S. Army Corps of Engineers. The Contractor shall be obligated to make the hopper dredge(s) available to serve in the Corps of Engineers' Reserve Fleet (CERF) at any time that the hopper dredge(s) is performing work under this contract. When the Contracting Officer is notified of the decision to activate this dredge(s) into the CERF, he shall take appropriate action to release the dredge(s). He may then extend or terminate the contract to implement whatever action is in the best interest of the Government. The CERF Contractor shall also be subject to the following conditions:

16.1 The Director of Civil Works may require the Contractor to perform emergency dredging at another CONUS (48 contiguous states) site for a period of time equal to the remaining time under this contract at the date of notification plus up to 90 days at the previously negotiated rate which appears on the schedule of prices in the BOA.

16.2 The Chief of Engineers may require the Contractor to perform emergency dredging at an OCONUS (outside CONUS which includes Alaska, Hawaii, Puerto Rico, the Virgin Islands or U.S. Trust Territories) site for a period of time equal to the remaining time under this contract at the date of notification plus up to 180 days at the previously negotiated rate which appears on the schedule of prices in the BOA.

16.3 The CERF shall be activated by the Chief of Engineers or Director of Civil Works; then the Ordering Contracting Officer will notify the Contractor. From the time of notification, the selected dredge(s) must depart for the emergency assignment within 72 hours for CONUS or 10 days for OCONUS

assignments.

16.4 A confirming delivery order will be issued pursuant to the BOA by the Ordering Contracting Officer. Such delivery orders shall utilize the schedule of rates in the BOA for the specific hopper dredge(s).

16.5 If during the time period specified in paragraphs 16.1, 16.2, or 16.3 above, a CERF vessel(s) is still required, the contract performance period may be continued for additional time by mutual agreement.

17. WEATHER CONDITIONS: When navigation is hazardous due to inclement weather (such as heavy fog), the plant and related equipment shall be moved to provide the maximum possible channel width for passage.

--End of Section--

# SECTION 02100

# DREDGING

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1. WORK COVERED BY CONTRACT PRICE (SEP 2000 SAS): The contract price includes all mobilization and demobilization, dredging and disposal of all materials and all disposal area operations as directed by the Contracting Officer. The work covered by this section consists of furnishing all plant, labor, and materials and performing all operations as may be necessary to complete the following work as shown on the drawings and as herein specified and as directed by the Contracting Officer.
*1

1.1 Brunswick Harbor: Dredging shall commence no earlier than 15 December 2004 and shall be completed by 1 March 2005. The required dredging for this contract is the Brunswick Harbor entrance channel, St. Simons Range, Stations 0+000B to ~~-40~~-31+000B, Cedar Hammock Range, Stations 15+000 to 21+835, and Jekyll Island and Plantation Creek Ranges, Station 6+250 to 0+000. The limits of dredging for this contract also include St. Simons Range, Stations ~~-40~~-31+000B to -56+500B and Brunswick Point Cut Range, Station 24+000 to 21+835 which the Contractor may be directed to dredge under Contingency Dredging as described in Paragraph 14.2.2.2. The required depths for dredging will be -38.0 ft. MLLW from Stations 0+000B to -56+500B, -36.0 feet MLLW from Stations 6+250 to 0+000, and -30.0 feet MLLW for Stations 15+000 to 24+000. Payment shall be made for material actually removed from 2 feet of allowable overdepth dredging, as described in paragraph OVERDEPTH AND SIDE SLOPES. Channel dimensions to be provided are shown on the contract drawings, CWK 502. The Contractor's attention is directed to the shoals along the north side of the channel between Stations -14+000B and -33+000B. This area has historically exhibited dynamic shoaling conditions. The Contractor is encouraged to visit the site to determine the suitability of the proposed plant for the project within this reach. This area will be required to be dredged.
*1

1.1.1 If additional shoals not shown on the contract examination survey develop anywhere in the navigation project above required depths between Stations 0+000B to ~~-40~~-31+000B, Stations 6+250 to 0+000, or between Stations 15+000 to 24+000 then they shall be required to be dredged by this contract. If dredging is required, the Contracting Officer shall direct the Contractor to remove the shoals at the unit price bid.
*1

1.1.2 If dredging is required in Brunswick between stations ~~-40~~-31+000B to -56+500B, the contractor will perform the dredging under Bid Item 13, Contingency Dredging. Several areas in this reach were not cleared to project depth in the last deepening. They are identified on the contact drawings on plates H-19 and H-20.

1.2 Savannah Harbor: Dredging shall commence on 15 December 2004 and shall be completed by 01 March 2005. The required dredging for this contract is between Stations 0+000 and -40+000B. The limits of dredging for this

contract also include Stations -40+000B to -60+000B, which the Contractor may be directed to dredge under Contingency Dredging as described in Paragraph 14.2.2.2. Channel dimensions to be provided are shown on the contract drawings, CWK 502. The required depth for material removal is -44.0 ft., M.L.L.W.

1.2.1 If additional shoals not shown on the contract examination survey develop anywhere in the navigation project above required depths between Stations 0+000B and -40+000B, then they will be required to be dredged by this contract.
*1
1.3 Operations required by this contract shall consist of the removal and disposal of all material which is indicated to be dredged in these specifications and drawings. The use of drag beams, bed levelers or other such devices shall not be allowed on this project. Movement of the dredge plant as required by the order of work to facilitate proper dredge operations is also required. The Contractor will be required to remove all material above the required depth as shown on the contract drawings and any additional shoaling which may have occurred by the time of the Before Dredging Surveys within the construction limits at the unit price for Items 0002 through 0005 and 0008 through ~~0012~~0011. The Contracting Officer has discretion to waive the requirement to remove material above the required depth if the Government does not consider it a hazard to navigation.

1.4 The Contractor shall properly dispose of all dredged material in accordance with the plans and specifications of this contract.

1.5 The Contractor shall monitor the offshore disposal area in accordance with the plans and specifications of this contract.

1.6 OMITTED

2. OMITTED

3. ORDER OF WORK (SEP 2000 SAS):

After the initial harbor maintenance dredging has been completed, the dredge will proceed to the other harbor and perform the required dredging for that harbor. Simultaneous dredging in both harbors will be allowed within the stated environmental windows. In each harbor the order of work will be as follows or as directed by the Contracting Officer or his authorized representative, based on conditions shown on the Before Dredging Survey. Dredging will begin at the furthermost point from the ocean disposal site and progress successively toward the other end. The order of work for dredging shall be directed insofar as practicable to provide for efficient operation of the dredging equipment. Dredging for navigation needs will be given priority and the Contractor shall be directed to perform work in any area as, in the opinion of the Contracting Officer, is more advantageous to the Government. Orders to the Contractor's Representative at the site of the work will be in writing based on acceptance sections as shown on the contract drawings.

4. PLAN AND SCHEDULE OF WORK (SEP 2000 SAS):

4.1 The Contractor shall submit a dredging plan within 5 days after Notice to Proceed, to be approved by the Contracting Officer prior to the commencement of dredging. The dredging plan must include the dredging plant the Contractor intends to use on each acceptance section, and his schedule indicating starting and completion dates for dredging each section. The Contractor's dredging and disposal plan and schedule shall ensure the following:

(1) Omitted.

(2) Dredge size and production rates.

(3) Performance of all work in strict accordance with the drawings and specifications.

(4) Completion of the work within the time allowed by the contract.

4.2 The dredging plan shall include (but is not limited to) the following:

(1) A description and schedule of all operations which will be performed in connection with the removal and transport of material. The operations shall be described in the sequence in which they will be performed.

(2) A description of all plant (including names of dredges) and equipment which will be utilized in connection with the removal and transport of material.

(3) Plant to be used in each acceptance section.

5. CHARACTER OF MATERIALS (AUG 1998 SAS): All soils discussed in these paragraphs were visually field classified in accordance with the Unified Soil Classification System. Discussions of soil consistencies are based on blow count data, where available. The blow count is the number of blows, or strikes, from a 140-pound hammer falling 30 inches needed to drive a 1-3/8 inch inner diameter splitspoon 12 inches.

5.1 Maintenance Dredging

5.1.1 Required depths for the Brunswick Harbor project areas are -38.0 feet mllw for Stations 0+000 to −56+500B, -36.0 feet mllw for Stations 0+000 to 6+250, and −30.0 feet mllw for Stations 6+250 to 24+000. Required depth for the Savannah Harbor project areas has been -44.0 feet mllw for Stations 0+000 to -60+000B. An allowable overdepth of 2.0 feet has been included in the Brunswick Harbor project from Station −14+000B to −39+000B and above Station 6+250 during recently completed deepening dredging projects. An allowable overdepth of 2.0 feet has been included in the Savannah Harbor project during previous dredging projects.

5.1.2 The maintenance materials to be removed from the Brunswick Harbor entrance channel from Stations 0+000 to -56+500, Plantation Creek and Jekyll Island Range from Station 0+000 to 6+250, Cedar Hammock Range from Stations 15+000 to 21+835, and Brunswick Point Cut Range from Stations 21+835 to 24+000, and Savannah Harbor entrance channel from Stations 0+000 to −60+000 are principally those materials having accumulated from shoaling since the last dredging was completed. Materials in the allowable overdepth of all project areas may or may not have previously been dredged as part of continuous maintenance programs.

5.1.3 The shoal materials are anticipated to primarily consist of silt passing a 200 mesh sieve, fine to coarse sands, and gravels. These include silty gravels (GM); clayey gravels (GC); poorly graded sands (SP); silty sands (SM); poorly graded, silty sands (SP-SM); well graded, silty sands (SW-SM); clayey sands (SC); low liquid-limit silts (ML); high liquid-limit silts (MH); low liquid-limit clays (CL); high liquid-limit clays (CH); and organic silts and organic clays (OL and OH). The consistency of these shoal materials could be described as very soft to soft (0 to 4 blows) for the silts and clays (ML, MH, CL, CH, OL, and OH) and very loose to loose (0 to 10 blows) for sands and gravels (GM, GC, SP, SM, SP-SM, SW-SM, and SC).

5.1.4 Materials within the allowable overdepth and side slopes and, to a certain degree, material immediately below these areas, could be both shoal material and undisturbed material. These materials would be consistent with materials found at the bottom of the harbor in other dredging projects. Sands, silts, and clays should be anticipated in various mixes. Blow counts for fine-grained soils (silts and clays) are generally in the 1 to 10 range, and blow counts for the coarse-grained soils are generally in the 1 to 30

range. Consequently, the consistency of the fine-grained soils could be described as very soft to stiff, while the consistency of the coarse-grained soils could be described as very loose to medium. In addition, the silts and clays may exhibit some plasticity with a high liquid-limit, which would cause some difficulty mixing with water. Within the Brunswick Point Cut Range project area, materials below the allowable overdepth may include undisturbed rock that has been classified as dolomites and limestones. In addition, rock has been identified within the Cedar Hammock Range project area along the north toe of the channel near Station 17+000 within the project depths.

5.1.5 Approximately 5,000 cubic yards of unclassified material was left undredged after the 2003/2004 Brunswick Harbor deepening project between stations -40+000B and -56+500B. The areas that were left undredged are identified on the contract drawings and are classified the same as in paragraph 5.1.3 and 5.1.4.

5.2 Debris: In addition to shoal materials and undisturbed materials, inorganic and organic debris are expected. This debris could include, but is not limited to, tools and equipment, wood, metal implements and fragments, concrete masses, riprap, cable, and other debris associated with maritime activities. Within the Savannah Harbor and Brunswick Harbor, the Contractor should also anticipate encountering construction rubble generated during recent widening and deepening construction activities. This material is most abundant near Station 0+000 and decreases in occurrence towards Station -60+000 in Savannah Harbor and from stations 0+000 to 56+500B in Brunswick Harbor. The debris encountered is a normal condition of the harbor and no extra payment will be made for downtime due to debris removal from the dredge draghead or pumps. The Contractor will be required to remove all inorganic and organic debris above the required dredging depths.

5.3 Material and Record Inspection: Bidders should examine the areas included in this contract and determine for themselves the character of materials. Records of previous dredging in the vicinity of the project are available in the office of the District Engineer, U.S. Army Engineer District, Savannah, 100 West Oglethorpe Avenue, Savannah, Georgia 31401-3640. The point of contact for this information is Mr. Walt Lanier in the Dredging Section at (912) 652-5064. It is highly recommended that bidders avail themselves of the opportunity to view these records.

6. DREDGING CONTROLS FOR BRUNSWICK HARBOR (AUG 1998 SAS)

6.1 The Contractor shall not pump for more than 5 minutes in high silt areas in Cedar Hammock and Brunswick Point Cut Ranges after initial overflow of the hoppers. Hopper overflows, such as skimmers, will be placed in the up position at the beginning of the load. At the end of the 5 minute overflow the load will be taken to the offshore disposal area. No subsequent dredging will be allowed until after the load is dumped.

6.2 While dredging near or below -32.0’ mllw in the vicinity of Station 17+000 in Cedar Hammock Range, the Contractor could encounter the material described in Paragraph 5.1.4 of this section and could have a marked increase in dredging difficulty. It is not the intent of this contract to remove this material. If the Contractor encounters material in the vicinity of Station 17+000 above project depth (-30.0’ mllw) that he cannot remove with the dredge assigned to the work, then he shall notify the Contracting Officer. These areas will be verified by the Contracting Officer and the requirement to remove the material may be waived.

7. DISPOSAL OF EXCAVATED MATERIAL (AUG 1998 SAS):

7.1 Brunswick Harbor: The material excavated shall be transported and deposited at sea in the offshore disposal area shown on Plate D-2, Sheet 26. The navigation channel is not an authorized disposal area, and the use of bed leveling or similar devices shall not be permitted. The maximum distance that the material will have to be transported will not exceed 20 miles. No material shall be placed above elevation -25.0 feet mllw. The Contractor shall perform monitoring to ensure this requirement is met. Bids received will be based on utilizing only the area described above.

7.2 Savannah Harbor: The material excavated shall be transported and deposited at sea in the offshore disposal area shown on Plate D-1, Sheet 25. The navigation channel is not an authorized disposal area, and the use of bed leveling or similar devices shall not be permitted. The maximum distance that the material will have to be transported will not exceed 11 miles. No material shall be placed above elevation -25.0 feet mllw. Bids received will be based on utilizing only the area described above.

7.3 Any material that is deposited elsewhere than in places designated or approved by the Contracting Officer will not be paid for and the Contractor may be required to remove such misplaced material and deposit it where directed by the Contracting Officer at the Contractor's expense.

7.4 The use of self-load bottom dump barges and hopper dredges to dispose of dredged material in the disposal areas will be permitted.

7.5 To ensure that material is being deposited within the limits of the designated ocean disposal area, each vessel used for the transportation of dredged material from the work site to the ocean disposal area shall be equipped with two navigational recording devices for use during transit to and from the ocean disposal area and during dumping operations. One of these will be either a chart or map recorder with a scaled grid that shows the beginning and ending location of each dump, either latitude/longitude or Georgia State plane coordinates. The other recording device shall be a computer to generate reports containing the information described in paragraph 7.5.3. The use of a loran navigation device is not suitable for use as the primary vessel positioning system.

7.5.1 Both navigation recording devices are to be used simultaneously throughout the project. If, for any reason, one of the recording devices stops functioning, it shall be repaired or replaced immediately upon return to the work site. The second recording device will continue to be used. If both recording devices stop functioning, at least one recording device will be outfitted on the vessel upon return to the work site.

7.5.2 No vessel shall leave for the dump site without at least one operational navigation recording device. Under extreme emergency conditions as determined by the Contracting Officer and when no recording device is operational, the vessel will be allowed to complete one loading and dump cycle. During this one loading and dump cycle, the Contractor shall manually record the vessel position at 2-minute intervals by either listing the vessel coordinates or graphically plotting the vessel position on a map. After dumping, the vessel shall not be allowed to resume dredging until both navigational recording devices are operational.

7.5.3 The daily dump logs will show the following for each dump:

(1) The dump number.

(2) Date

(3) Time dump began

(4) The location in the entrance channel from which the dredged material came (give from/to dredging stations).

(5) The beginning and ending coordinates for which dredging was conducted for the load.

(6) The beginning (hopper opened) and end (hopper closed) coordinates for each dump.

(7) The number of cubic yards in each dump.

(8) Brief description of the material in each dump (e.g., clean, coarse sand; sand and shell; sand mixed with clay and shell; dark organic silt sand; debris or others).

At the end of the contract, the Contractor will prepare a computer generated report for the entrance channel which encompasses the required information listed in Items (1) through (7) above. This data will be provided in an ASCII, delimited format, capable of being imported into a spreadsheet, such as an Excel spreadsheet.

When disposal operations are complete, the Contractor will provide to the COR two scatter plots using small dots showing where each load was deposited (beginning of each dump). One plot will be on a scale of 1 inch equals 1500 feet (to fit an 8-1/2 x 11 inch paper), and the other plot will be to a scale of 1 inch equals 500 feet (to fit a full size blue line drawing). The plots will also show the boundaries of the ODMDS.

8. OVERDEPTH AND SIDE SLOPES (AUG 1998 SAS):
*1
8.1 Overdepth: To cover the inaccuracies of the dredging process, material removed from within the specified areas to be dredged to a depth of not more than 2 feet below the required depth will be computed and paid for at the contract price for Bid Items 0002 through 0005 and 0008 through ~~0012~~0011, Maintenance Dredging. This overdepth material is defined as that which is underneath shoals that exist above the required depth that are required to be removed by the Contracting Officer.

8.2 Side Slopes.
*1
8.2.1 Brunswick Harbor: Removing material from the channel side slopes is not required. A 1V on 3H pay slope plane shall be used for Brunswick Point Cut, Cedar Hammock, Jekyll Island, and Plantation Creek Ranges and will be paid for at the contract price for Bid Item No. 0007 through 0009, Maintenance Dredging. A 1V on 5H pay slope plane shall be used for the St. Simons Range and will be paid for at the contract for Bid Item Nos. 0009 ~~through~~, 0010, 0011, and 0013, Maintenance Dredging. Any material removed outside the allowable pay slope planes (except for material in the 2-foot allowable overdepth) will not be credited as pay yardage.

8.2.2 Savannah Harbor: Removing material from the channel side slopes is not required. The Contractor is required to cut the slope vertically to the required depth at the channel toe. Material actually removed from outside the required section, shown on the contract drawings as lying between the vertical cut and maximum pay slope plane (1 vertical:5 horizontal) will be computed and be paid for at the contract price for Bid Items 0002 through 0006, Maintenance Dredging. Any material removed outside the required side slope planes (except for material in the 2-foot allowable overdepth) will not be credited as pay yardage.

8.3 Excessive Dredging: Material taken from beyond the limits as described in paragraphs OVERDEPTH AND SIDE SLOPES above will be deducted from the total amount dredged as excessive dredging for which payment will not be made. Nothing herein shall be construed to prevent payment for the removal of shoals performed in accordance with the applicable provisions of either paragraphs FINAL EXAMINATION AND ACCEPTANCE or SHOALING of this section.

9. SURVEYS (JAN 1994 SAS):

9.1 Acceptance and final payment for each acceptance section will be based (as described in paragraph MEASUREMENT AND PAYMENT of this section) on Before and After Surveys made by the Government. The Government will make Before and After Surveys only after the Contractor provides the following notices in writing:

(1) Commencement Notice: Fifteen days* before dredging is to begin in an acceptance section, the Contractor shall provide to the Contracting Officer written notice of the commencement of dredging. Within 15 days* (weather permitting) after receipt of the notice, a Before Survey will be performed for the entire acceptance section by the Government. If the commencement of dredging in the acceptance section is delayed more than 15 days* after the date of the Before Survey, the Government will, at the Contractor's request, resurvey the entire acceptance section. Unless the delay is caused by the event(s) described in clause FAR 52.211-12 LIQUIDATED DAMAGES of SECTION 00800 and FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) of SECTION 00700, the additional survey will be charged to the Contractor at the rate of ~~$2,000~~ $2,500 per survey-crew day required by the Government to mobilize, survey, and demobilize, if the government survey boat is in the same harbor as the survey. If the government must mobilize the boat from one harbor to the other, an additional $1,850 will be charged.
* "days" defined as "Government working days (Monday through Friday)"

(2) Completion Notice: Upon completion of an acceptance section, the Contractor shall provide notice of completion to the Contracting Officer. Within 5 days (weather permitting) after receipt by the Contracting Officer of the notice, an After Survey will be performed for the entire acceptance section by the Government. Generally within 2 days after completion of the survey, copies of the plotted After Survey will be furnished to the Contractor at no charge. Additional copies will be furnished on request at the cost of reproduction. The work will be thoroughly examined in accordance with the procedure described in paragraph FINAL EXAMINATION AND ACCEPTANCE of this section.

9.2 Before and After Surveys are made for acceptance and payment purposes only. Other surveys made by the Government as described in SECTION 00800, clause FAR 52.246-12, INSPECTION OF CONSTRUCTION, are for the sole benefit of the Government.

9.3 All surveys will be performed with a representative of the Contractor on board the Government vessel during the full execution of the survey. No survey will be performed without a representative of the Contractor on board the survey vessel. The Contractor's representative shall be fully knowledgeable in offshore construction hydrographic surveying procedures, techniques, equipment, and horizontal and vertical calibration methods, and state-of-the-art horizontal and vertical accuracy limitations. The Contractor's representative shall observe and review, in progress, the adequacy and accuracy of the survey. All surveys performed by the government and the Contractor will use HYPACK software.

9.4 Survey Certification:

9.4.1 Immediately upon completion of the survey, the Contractor's representative shall, based on his onsite review of the survey execution, determine that the survey contains no evidence of error, and that subsequent horizontal and vertical corrections are accurately annotated on the subsurface record.

9.4.2 The Contractor's authorized representative shall bring aboard the vessel a blank copy of the Certification Statement and shall attest to an acceptable survey by signing the Certification Statement before leaving the vessel. Sample copy of the Certification Statement is in Section 00800, Attachment 1.

9.4.3 In the event the Contractor's authorized representative observes (identifies and quantifies) specific documentary evidence of error, the survey will be immediately rerun. Resurveys will totally supersede any previously run survey and will be run over the full reach of any particular Acceptance Section.

9.4.4 If acceptability is not acquired after performing a resurvey of an Acceptance Section, a meeting shall be held between the Contractor and the Contracting Officer's Representative to expeditiously resolve the issue causing rejection of the survey. Contractor equipment and personnel standby time to resolve acceptability of the survey shall be at the Contractor's expense.

9.4.5 In no case shall a previously unacceptable survey be later judged acceptable by the Contractor.

9.4.6 Should the Contractor or his authorized representative refuse to certify to the acceptability of a survey for contract payment, then the following actions will follow:

9.4.6.1 Before Dredging Survey. Excavation shall not commence until representatives of the Contractor and Contracting Officer have met and resolved the basis for refusal of certification. Should the Contractor commence excavation prior to obtaining an acceptable survey, he shall be liable for any excavation performed. If a resurvey is performed, and accepted, prior excavation will not be measured, estimated, or paid for.

9.4.6.2 After Dredging Survey. The survey window allowed under paragraph 9.1, Completion Notice, will be indefinitely extended until a final survey is accepted. Any material accretion that might occur due to such a time extension will neither be measured, estimated, or paid for. (see paragraph 9.1(2))

9.4.6.3 Contractor equipment and personnel standby time to resolve his refusal to certify to the acceptability of a survey when there is no identifiable error shall be at the Contractor's expense and resultant delays shall not be basis for time extensions of the contract.

9.4.6.4 Intermediate surveys taken between the before dredging and after dredging surveys will not used for the purposes of determining quantities for final payment and acceptance of an area dredged.

9.5 Dispute of Surveys Performed by the Government: In the event that the Contractor disputes the accuracy of any Government performed survey, the Contractor will immediately notify the Contracting Officer or his Authorized Representative in writing as to the nature of the dispute. If the dispute is such that no agreement can be immediately resolved, the Contractor will immediately request that a government representative accompany the Contractor survey crew and perform a survey in the presence of the government representative. The Contractor will submit to the government representative on board the survey boat a copy of the Contractor’s raw data files in HYPACK format. All of the following will be submitted with the Contractor’s performed survey raw data:

(1) Method of horizontal positioning.

(2) Method of depth sounding. All motion sensing readings will be separately recorded and provided to the government as part of the Contractor’s raw data files and identified per survey line. The data recordings will include, but are not limited to, heave, pitch, and roll data recordings.

(3) Date, time, and stage of tide.

(4) Water surface conditions.

(5) A map showing the reduced depth soundings.

(6) Plotted cross sections at a scale of 1 inch equals 50 feet horizontal and 1 inch equals 10 feet vertical of the Contractor-performed survey compared with the disputed Government-performed survey.

(7) A map showing areas worked by the dredge plant.

(8) Survey data in ASCII format on 3.5 inch double sided, high density disks. This data should be in the form of x-coordinate, y-coordinate, reduced depth sounding, in column format and separated by spaces. Each survey line should be separated by a header showing station number and number of points on that survey line.

10. ESTIMATED QUANTITIES (AUG 1998 SAS):
*1
10.1 Dredging: The contract drawings should be considered for information purposes only. The following estimated quantities are available for Bid Item Nos. 0002 - 0005 and 0008 through ~~0012~~0011, Maintenance Dredging. Quantities shown in over depth and side slope column below reflects only material available beneath the areas that have shoaled above the required depth.

*1

ESTIMATED DREDGING QUANTITIES

| Bid Item | Location | Req'd Depth (FT,MLLW) | *Hist. Dredging Total (CY) | **Req'd Depth (CY) | **Over-depth (CY) | **Slope (CY) | Anti-cipated Shoaling (CY) |
|---|---|---|---|---|---|---|---|
| SAVANNAH HARBOR | | | | | | | |
| 0002 | 0+000B to -10+000B | -44.0 | 49,000 | 1,700 | 12,500 | 1,600 | 2,400 |
| 0003 | -10+000B to -20+000B | -44.0 | 95,000 | 23,500 | 49,700 | 34,700 | 13,100 |
| 0004 | -20+000B to -30+000B | -44.0 | 66,000 | 3,000 | 13,900 | 5,600 | 3,000 |
| 0005 | -30+000B to -40+000B | -44.0 | 345,000 | 71,100 | 76,700 | 201,900 | 27,300 |
| | TOTALS, SAVANNAH HARBOR | | 555,000 | | | | |
| BRUNSWICK HARBOR | | | | | | | |
| 0008 | 15+000 to 21+835 (Cedar Hammock Range) | -30.0 | 15,000 | 35,300 | 76,700 | 8,500 | 16,800 |
| 0009 | 6+250 to -8+000 (Jekyll Island, Plantation Creek, St. Simons Range) | -36.0/ -38.0 | 70,000 | 3,700 | 7,900 | 3,500 | 2,100 |
| 0010 | -8+000B to -21+500B (St. Simons Range) | -38.0 | 143,000 | 9,600 | 12,900 | 68,200 | 4,100 |
| 0011 | -21+500B to -31+000B (St. Simons Range) | -38.0 | 112,000 | 19,100 | 67,500 | 24,800 | 15,300 |
| ~~0012~~ | ~~-31+000B to -40+000B (St. Simons Range)~~ | ~~-38.0~~ | ~~15,000~~ | | | | |
| | TOTALS, BRUNSWICK HARBOR | | ~~340~~325,000 | | | | |

NOTE: *This quantity is based on historical dredging quantities which include required depth and overdepth with side slopes.

**These quantities based on examination survey. Quantities for the first subitem for Bid Items 0002 through 0005 and 0008 through ~~0012~~ 0011 determined by totaling the quantity for the required depth and 85% of the allowable overdepth. The quantity for the second sub ~~item is the difference between the historical dredging quantity and the first sub item total and~~ consists of the remaining overdepth, sideslope, and anticipated shoaling. Twenty percent of the first sub item was used for anticipated shoaling.

11. ACCEPTANCE SECTIONS (DREDGING) (AUG 1998 SAS):

11.1 For purposes of acceptance, the work to be done will be divided into acceptance sections as indicated below and as specified in the authorized representative of the Contracting Officer's written dredging orders to the Contractor.

| Acceptance Section | Station/Area |
|---|---|
| SAVANNAH HARBOR | |
| 1. | Sta. -0+000 to -10+000B |
| 2. | Sta. -10+000B to -20+000B |
| 3. | Sta. -20+000B to -30+000B |
| 4. | Sta. -30+000B to -40+000B |
| *1 BRUNSWICK HARBOR | |
| 1. | Sta. 21+835 to 15+000 |
| 2. | Sta. 6+250 to -8+000B |
| 3. | Sta. -8+000B to -21+500B |
| 4. | Sta. -21+500B to -31+000B |
| ~~5.Sta. -31+000B to -40+000B~~ | |

11.2 Should the acceptance sections be inappropriate for the Contractor's Dredging Plan, the acceptance sections, with the Contracting Officer's approval, may be modified. Proposed changes to the acceptance sections shall be submitted to the Contracting Officer in writing for approval.

12. COMMUNICATIONS (JAN 1994 SAS): All dredges shall be equipped with a bridge-to-bridge radio-telephone capable of operation from its main control station and capable of transmitting and receiving on the frequency or frequencies within the 156-162 mega-Hertz bank using the classes of emissions designated by the Federal Communications Commission for the exchange of navigational information and to provide for maximum safety of operations. Channel 16 is designated as the standby channel and channel 14 is the designated working channel. The Contractor shall provide for the duration of the contract a cellular telephone for communication between the dredge and the Corps of Engineers inspector. The cellular telephone shall be located on the bridge or in the lever room/operator cab of the dredge, as appropriate, depending upon the type of dredge(s) being used. All dredges shall also be equipped with a cellular telephone on the bridge for Corps of Engineers communication with the dredge and inspectors. Final acceptance of the plant will not be made until the radio-telephone is installed and in good working order.

13. OMITTED

14. MEASUREMENT AND PAYMENT (AUG 1994 SAS):

14.1 Measurement:

14.1.1 The total amount of material removed and to be paid for under the contract will be measured by the cubic yard in situ by computing the volume within the required dredging prism between the bottom surface shown by soundings of the last survey made before dredging and the bottom surface shown by the soundings of a survey made as soon as practicable after the work has been completed, less any deductions that may be required for excessive dredging, as described in paragraph OVERDEPTH AND SIDE SLOPES, and misplaced material, as described in paragraph DISPOSAL OF EXCAVATED MATERIAL. After dredging surveys will be made only upon written request by the Contractor. The bin and scow measurement method (see paragraph 14.6) will only be used to determine monthly partial payment when weather prevents the use of hydrographic surveying equipment.

14.1.2 The maps and/or drawings already prepared (clause CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (DFARS 52.236-7001) of SECTION 00700) are believed to represent accurately conditions existing at the time surveyed, but the depths shown thereon will be verified and corrected by soundings taken within 14 days before dredging. Determination of quantities removed and the deductions made therefrom to determine quantities by place measurement to be paid for in the area specified, after having once been made, will not be reopened, except on evidence of collusion, fraud, or obvious error.

14.1.3 OMITTED

14.2 Payment:

14.2.1 Payment for all mobilization and demobilization (Bid Item 0001) will be lump sum and will be made in accordance with SECTION 00700, clause DFARS 52.236-7004, PAYMENT FOR MOBILIZATION AND DEMOBILIZATION.

14.2.2 Dredging: Final payment for dredging will at the bid unit price and based on quantities computed as described above.
*1
14.2.2.1 Monthly partial payments for completed dredging of acceptance sections for Bid Item Nos. 0002 through 0005, Maintenance Dredging, Savannah Harbor and Bid Item Nos. 0008 through ~~0012~~0011, Maintenance Dredging, Brunswick Harbor will be based on quantities determined by soundings and/or sweepings taken behind the dredge or dredge plant and from data furnished on the Contractor's Daily Report of Operations.

14.2.2.2 Contingency Dredging: At the direction of the Contracting Officer, contingency dredging as indicated on the contract drawings may be required for this contract from Station -40+000B to -60+000B in Savannah Harbor and from Station 24+000 to 21+835 and Station ~~-40+000B~~ -31+000Bto -56+500B in Brunswick Harbor. The Contractor will be notified in writing when the contingency dredging is required. The contingency dredging is estimated to take 2 days per contingency bid item to complete. A day is defined as a 24-hour period. Rental will begin when dredging commences at the dredging site and end upon leaving the disposal site. Payment will not be made for downtime for minor repairs or replacement of equipment or for any lost time. All payment will be based upon effective hours in a 24-hour period. Payment shall be calculated on a daily rental rate based upon Bid Item No. 0006, 0007, and 0013.

14.3 Payment for Contingency Dredging: Payment for dredging described in paragraph 14.2.2.2 above will be made at the bid unit price.

14.4 In-Place (Survey) Method of Measurement:

14.4.1 General: Surveys to determine the volume of material removed under this contract will be accomplished with the use of electronic equipment. The horizontal location of survey lines and sounding points will be determined by the use of an electronic positioning system. Soundings will be made using a 200 khz fathometer. The Fathometer will be adjusted by the bar check method

to compensate for variations of the velocity of sound in water. Both horizontal and depth data will be collected on diskette and processed by the Government for both map preparation and quantity calculations.

14.4.2 Specific: Survey lines will be made at approximately 500-foot intervals perpendicular to the centerline of the channel. A before dredging survey will be performed a maximum of 15 days before commencement of dredging operations in each acceptance section. As soon as practicable after the completion of dredging of an acceptance section, but not more than 5 days afterward, the after dredging survey will be performed. Before and after dredging surveys will be made only upon written request from the Contractor.

14.4.3 Due to the intricacies of offshore surveying, the Contractor shall be required to perform simultaneously with the Government before and after dredging surveys using his own equipment and personnel. Upon completion of each survey line run by the Government, the Contractor shall survey the same line in the same direction as surveyed by the Government to verify survey data. The Government will provide the Contractor 24 hours' notice of the date and time of the performance of an official survey by the Government. Should weather conditions preclude obtaining a survey by the Government or the Contractor, the survey will be rescheduled. The Contractor shall be required to have personnel from his staff accompany the Government survey party on any survey the Government performs for this contract.

14.5 Tide Data

14.5.1 Real Time Kinematics (RTK) GPS: RTK GPS will be used for determining Real Time water levels (tide corrections). The Contractor is responsible for providing an RTK capable GPS receiver on board the vessel for all surveying and dredging operations. The Contractor is also responsible for providing a radio/modem in order to receive carrier-phase corrections from the Corps-owned RTK GPS reference station. The U.S. Army Corps of Engineers, Savannah District, is currently using Ashtech Z-Xtreme GPS receivers and Pacific Crest RFM96 radios capable of 9600 baud through air transmissions. The Government cannot ensure compatibility with other systems. Radio frequencies should be obtained from Mr. Mark Clark at 912-652-6088. Corps personnel will instruct the Contractor as to the proper use of this system.

14.5.2 Kinematics Tidal Datum: A file listing the separations between the Reference Ellipsoid and the Chart Datum (mean Lower Low Water) will be provided to the Contractor for entry into the hydrographic survey software. NAVD 88 will be referenced in all new surveys and new contract documentation as related to this contract.

14.5.3 Non-Operational Reference Station: In the event that the reference station becomes non-operational, the Contractor shall contact Mr. Mark Clark at the telephone number shown above. The Government will take measures to ensure correction of any problems with the GPS equipment within 72 hours of notification.

14.6 Records and Verification of Hopper Dredge Loadmeter System:

14.6.1 During the first full day of dredging, the Contractor shall furnish sufficient documentation to enable the Contracting Officer to determine the quantity of material dredged. This documentation will include the time, place dredged, and quantity of each load hauled. For hopper dredges, it will include the loadmeter chart. In addition, the Contractor shall demonstrate the accuracy of his bin measurement system to a Government representative. For this purpose, displacement curves and hopper capacity tables will be required. These documents are acceptable to the Government if prepared by the vessel's builder or a qualified engineering firm (other than the Contractor) and notarized.

14.6.2 If the Contractor cannot demonstrate the accuracy of his loadmeter

to the satisfaction of the Contracting Officer's Representative by completion of the first full day of dredging, a registered marine architect or engineer shall be hired by the Contractor to certify the accuracy of the loadmeter and ullage table and provide the results to the COR by the completion of the first week of dredging.

14.7 Loadmeter Calibration:

14.7.1 Hopper Dredges: The bin measure system senses changes in draft due to loading and displays the draft changes in the form of displacement changes (weight). Displacement changes are mathematically adjusted to determine the number of cubic yards of in-place density material hauled. This adjustment requires the average in-place density of the material to be dredged. For this job, an in-place density of 1,800 grams per liter will be used. All hopper dredges shall be equipped with a loadmeter which displays the loading process as a function of time on a permanent record.

14.7.1.1 Lightship calculations shall be performed prior to commencement of dredging and subsequent calculations shall be made each time there is an appreciable change in the weight of the vessel (prior to and after taking on fuel, water, heavy equipment, etc.), a Government representative shall be present when the lightship readings are taken and when the calculations are made. A copy of the calculations shall be provided to the Government representative immediately after lightship is determined. Daily adjustments of lightship shall be made using fuel and water soundings to determine the weight change. The change shall be documented on the Contractor's daily report. Appropriate calculations shall be shown. Appreciable change in weight does not include the loading and unloading of dredge material. All draft markings (port bow, port stern, starboard bow, and starboard stern) shall be legible and adequate to perform an accurate lightship determination. Wetship calculations may not be used as an alternate method to determine lightship.

14.7.2 Scows: The bin measurement for scows shall be determined by averaging a minimum of four draft mark readings to determine the mean depth of load, and from it, the volume of the load. The use of loadmeters on scows is optional.

14.8 Buoy Removal: Payment for buoy and/or anchor removal will be made at the contract price for Bid Item No. 0014, Buoy Removal.

14.9 Stand-by Time: Payment for stand-by time will be made at the contract price for Bid Item No. 0015, Stand-by Time in the event that dredging is suspended by the Contracting Officer. The Contractor will be paid at the contract price per day until such time dredging resumes or the Contractor is released. A day is defined as a 24-hour period.

15. CONTINUITY OF WORK (JUN 1995 SAS): No payment will be made for work done in any area designated by the Contracting Officer until the full depth required under the contract is secured in the whole of such area, nor will payment be made for excavation in any area not adjacent to and in prolongation of areas where full depth has been secured except by decision of the Contracting Officer. Should any such nonadjacent area be excavated to full depth during the operations carried on under the contract, payment for all work therein may be deferred until the required depth has been made in the area intervening. The Contractor may be required to suspend dredging at any time when the locating system used for positioning the dredge is not operational.

16. INSPECTION SUPPORT (JUL 1992 SAV): The Contractor shall furnish, on request of the Contracting Officer or any inspector, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the dredging and/or floating plant as may be reasonably necessary in inspecting and supervising the work. However, the Contractor will not be required to furnish such facilities for surveys prescribed in the paragraph FINAL EXAMINATION AND ACCEPTANCE. The Contractor shall also fur-

nish, on the request of the Contracting Officer or any inspector, suitable transportation from all points on the shore designated by the Contracting Officer to and from the various pieces of plant, and to and from the dredged material disposal areas. Should the Contractor refuse, neglect or delay compliance with these requirements, the specific facilities may be furnished and maintained by the Contracting Officer and the costs thereof will be deducted from any amounts due or to become due the Contractor. The Contractor will have onboard the dredge or at the field office a computer capable of running Microsoft Excel 2000. The Contractor will complete on a daily basis ENG Form 4267 in an electronic format that will be provided by the Government.

17. FINAL EXAMINATION AND ACCEPTANCE (APR 1994 SAS):

17.1 As soon as practicable, but not more than 5 working days after the completion of dredging an entire acceptance section as in the opinion of the Contracting Officer will not be subject to damage by further operation under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or sweeping, or both, as determined by the Contracting Officer. Should any shoals, lumps, or other lack of contract depth be disclosed by this examination, the Contractor will be required to remove same by dredging at the contract rate for dredging, but if the bottom is soft and the shoal areas are small and form no material obstruction to navigation, the removal of such shoal may be waived at the discretion of the Contracting Officer. The Contractor or his Authorized Representative will be notified when soundings and/or sweepings are to be made, and will be permitted to accompany the survey party. Final acceptance will be made when the area is found to be in satisfactory condition. Should more than two soundings or sweeping operations by the Government over an area be necessary by reason of work for the removal of shoals disclosed at a prior sounding or sweeping, the cost of such third and any subsequent soundings or sweeping operations will be charged against the Contractor at a rate of $2,000 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is in route to or from the site or held at or near the said site for such operations.

17.2 Final acceptance of the whole or a part of the work and deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud or obvious error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

18. SHOALING (JAN 1994 SAS): If, before the contract is completed, shoaling occurs in any section previously accepted, including shoaling in the finished channel because of the natural lowering of the side slopes, redredging at the contract price, within the limit of available funds, may be performed if agreeable to both the Contractor and the Contracting Officer.

19. ACCOMMODATIONS AND MEALS FOR INSPECTORS (JAN 1994 SAS):

19.1 The Contractor shall furnish regularly to inspectors on board the dredge or other craft upon which they are employed a suitable separate room(s) on the Officer's deck for sleeping quarters and an office. The room shall be fully equipped and maintained to the satisfaction of the Contracting Officer; it shall be properly heated, ventilated, lighted, have appropriate AC power with surge protectors suitable for personal computer use, and shall have a desk which can be locked, a chair and a bed for each inspector, and washing conveniences. The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price. If the Contractor fails to meet these requirements, the Contracting Officer will secure the facilities referred to above, and the cost thereof will be deducted from payments to the Contractor.

19.2 If the Contractor maintains on this work an establishment for the subsistence of his own employees, he shall, when required, furnish to inspectors

employed on the work, and to all Government agents who may visit work on official business, meals of a quality satisfactory to the Contracting Officer.

20. PROGRESS CHART (JAN 1991 SAS): In accordance with the clause SCHEDULES FOR CONSTRUCTION (FAR 52.236-15) in SECTION 00700, the Contractor shall complete and submit for approval a progress chart prepared on Form ENG 2454 (see SECTION 00800, Attachment 1). This chart shall reflect each bid item from the bid schedule. The Contractor shall submit an updated chart reflecting progress to date with each request for a progress payment.

21. MATE'S LOG (AUG 1994 SAS): The Contractor will maintain a daily mate's log and provide a copy of the log to the Contracting Officer at the end of each day. This log will include the following for each shutdown: date, shutdown time, reason for shutdown, and startup time.

22. BUOY REMOVAL (AUG 1998 SAS):

22.1 If the Coast Guard is unable to relocate buoys and/or remove buoy anchors for the purpose of dredging, the Contractor will be required to do so. The barge that is to do the work should be equipped with deck winches and not spuds. The barge shall be certified to work offshore.

22.2 The Coast Guard has previously reported losing buoy sinkers in Savannah Harbor. In Savannah Harbor an abandoned buoy sinker is located at approximately N743272.8 E1066749.8 (vicinity of Station -15+000B, NAD83 data, Georgia State Plane coordinates).

23. SMALL BOAT LICENSE (OCT 2000 SAS): Operators of any vessel used to transport Contractor and/or Government personnel to or from the dredge to points onshore shall have a valid United States Coast Guard license and radar certification.

--End of Section--

# SECTION 02112

# ENVIRONMENTAL PROTECTION

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3. Endangered Species Watch Plan
4. Observers
5. Training
6. Environmental Restrictions (Hopper Dredging)
7. Trawling Requirements
8. Manatees
9. Payment

1. SCOPE: This section covers prevention of environmental pollution and protection of endangered species. It is the responsibility of the Contractor to investigate and comply with all Federal, State, county and municipal laws concerning pollution of air and water, and protection of health, shellfish, fish, and wildlife.

2. GENERAL:

2.1 The Contractor shall provide sufficient safeguard to prevent pollution to the waterways by spillage of waste or paints, fuels, oils, bitumens, calcium chloride, insecticides, herbicides, or other similar materials harmful to fish, shellfish, or wildlife.

2.2 Contractor Vessels: All vessels associated with the project shall operate at "no wake" speed at all times while in shallow waters or channels where the draft of the boat provides less than 4 feet clearance of the bottom. Boats used to transport personnel will be shallow-draft vessels, preferably of the light-displacement category, where navigation safety permits. Vessels transporting personnel between the landing and work site shall follow routes of deep water to the extent possible. Designated endangered species watchers shall be posted in each boat.

2.3 Endangered Species: Sea turtles, whales and Florida manatees have been sighted in the general vicinity of the project. The Contractor shall maintain a special watch for the duration of this contract for these animals and any sightings shall be reported to the Contracting Officer. All precautions shall be taken to avoid damage to these endangered animals and all other wildlife onsite. Designated endangered species watchers shall be posted in each boat as well as on all operating plant and marine equipment which is under way. The Contractor shall be held responsible for any endangered species harmed, harassed, or killed as a result of the construction of the project. All construction activities will cease upon sighting of manatees within 100 yards of the project area. Construction activities will not resume until the manatee has not been seen in the project area for at least 30 minutes. The Contractor shall keep a log detailing all sightings, collisions, damage, or killing of endangered species which have occurred during construction. Any collision with an endangered species shall be reported immediately to the Corps of Engineers' Contracting Officer's Representative (912) 652-5064 or (912) 652-5894 and the Georgia Department of Natural Resources (weekdays 8:00 a.m. - 4:30 p.m.: (912) 264-7218 or 1-800-272-8363; nights and weekends: 1-800-241-4113. For a collision in Savannah Harbor, the collision shall also be reported immediately to the Charleston Ecological Services Office of the Fish and Wildlife Service (803) 724-4707. For a collision in Brunswick Harbor, the collision shall also be reported to the U.S. Fish and Wildlife Service, Brunswick Office (912) 265-9336 and the National Marine Fisheries Service Stranding Network pager number (305) 862-285. Within 15 calendar days of project completion, the Contractor shall submit a report summarizing the above incidents to the U.S. Army Engineer District, Savannah, Dredging Section, Attn: CESAS-OP-NN, P.O. Box 889, Savannah, Georgia 31402-0889. All reports shall be signed by the Contractor or his representative and shall include the name of the person making the sighting.

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3. ENDANGERED SPECIES WATCH PLAN: A watch plan (see sample, Attachment 1 to Section 00800) that is adequate to protect endangered species from the impacts of dredging and associated operations must be approved by the Contracting Officer before the commencement of any dredging activities. The watch plan shall be for the entire period of dredging and shall include the following:

a. Watch plan coordinator's name.

b. Names and qualifications of designated observers.

c. Name(s) of the person(s) responsible for reporting sightings.

3.1 This watch plan shall be submitted to the Contracting Officer 7 days prior to the preconstruction conference.

4. OBSERVERS:

4.1 The Contractor shall provide on board the dredge and all vessels used to transport personnel and equipment between the landings and the worksite(s) trained observers to watch for endangered species. These observers may be dredge personnel, except on the hopper dredge. Only National Marine Fisheries Service (NMFS) approved observers may stand independent (i.e., unassisted, unaided, alone) endangered species watches on hopper dredges. If an observer has been conditionally approved by NMFS, she/he may stand "alongside watches" (i.e., alongside an approved observer), but may not stand independent watches until after the NMFS terms of conditional approved has been met. Specific information on NMFS-approved individuals trained as endangered species observers is available from Mr. Charles Oravetz or Mr. Eric Hawk of the National Marine Fisheries Service at (813) 570-5312.

4.2 The Contractor shall provide onboard the dredge two NMFS-approved turtle observers. The turtle observers shall be onboard the hopper dredge 100 percent of the time the Contractor will be dredging and transiting to and from the disposal site. The turtle observers shall document any presence of turtles or turtle parts and shortnose sturgeon or sturgeon parts retained in the screens. Members of the dredge crew shall not be allowed to perform the duties of the turtle observer.

4.2.1 ~~In addition to the turtle observers, during the period 1 December through 31 March, the Contractor shall employ the services of one endangered species observer with at-sea, large whale identification experience to conduct daytime observations for the presence of whales. Whale observers shall document all whale sightings and all slow days and nights, along with the reason for the slow speed. The report shall include a table accounting for each day the dredge worked. Members of the dredge crew shall not be allowed to perform the duties of the whale observer. A final report including the above documentation for each harbor shall be submitted to the COR within 30 days of completion of the work.~~
~~The Contractor shall provide onboard the dredge two NMFS approved endangered species observers. These observers shall be onboard the hopper dredge 100 percent of the time the Contractor will be dredging and transiting to and from the disposal site. During the period 1 December through 31 March, one endangered species observer will conduct daytime observations on the dredge bridge/observation deck for the presence of whales whenever the dredge is in transit. The observers shall document any presence of turtles or turtle parts and shortnose sturgeon or sturgeon parts retained in the screens. The observers shall also document all whale sightings and all slow days and nights, along with the reason for the slow speed. The documentation shall include a table accounting for each day the dredge worked. Members of the~~

~~dredge crew shall not be allowed to perform the duties of the observers. A final report including the above documentation for each harbor shall be submitted to the COR within 30 days of completion of the work.~~

The Contractor shall provide onboard the dredge two NMFS-approved endangered species observers. These observers shall be onboard the hopper dredge 100 percent of the time the Contractor will be dredging and transiting to and from the disposal site. During the period 1 December through 31 March, the Contractor shall employ the services of one endangered species observer with at-sea, large whale identification experience to conduct daytime observations for the presence of whales. A NMFS-approved turtle observer meeting the whale identification criteria can fulfill the role of whale observer. The observers shall document any presence of turtles or turtle parts and shortnose sturgeon or sturgeon parts retained in the screens. The observers shall also document all whale sightings and all slow days and nights, along with the reason for the slow speed. The documentation shall include a table accounting for each day the dredge worked. Members of the dredge crew shall not be allowed to perform the duties of the turtle observers. A final report including the above documentation for each harbor shall be submitted to the COR within 30 days of completion of the work.

5. TRAINING:

5.1 The Contractor shall be required to monitor and instruct all personnel associated with the construction of the project about the possible presence of endangered species in the area and the need to avoid collisions. The Contractor shall brief his personnel concerning the civil and criminal penalties for harming, harassing or killing species that are protected under the Endangered Species Act of 1973 and the Marine Mammal Protection Act of 1972.

5.2 Omitted.

5.3 The Contractor shall instruct all personnel associated with the dredging of the presence of right whales and the need to avoid collisions with these mammals. The Contractor will also brief all personnel on the habits and behavior of the right whale. See Attachment 1 to Section 00800, Figure 1 for identifying characteristics of the right whale.

6. ENVIRONMENTAL RESTRICTIONS (HOPPER DREDGING): Hopper dredging activities shall be limited to operating between 15 December and 31 March and the Contractor shall take the necessary precautions to avoid impacts to these endangered mammals. No deviations will be allowed for operations outside of these time periods.

6.1 Whales:

6.1.1 No incidental take of right whales is authorized. Normal vessel speeds may be used at the Contractor’s discretion, except as noted below, for the duration of this contract during daylight hours (sunrise to sunset). However, the Contractor shall restrict dredge and attendant vessel speeds to 5 knots or less (or minimum safe speed) during night (sunset to sunrise) operations unless there is no information from the right whale early warning system (RWEWS) or any other observations/information that reveals any right whales within 15 nautical miles of the project area. If aerial surveys for right whales show no sightings on a particular day, the vessel speeds will not be restricted during the following nighttime operations. If a right whale is determined through any means to be in the project area on a particular day, negative results from any other type of survey on that same day shall not serve to cancel that night's restriction of dredge and attendant vessel speeds. For Savannah Harbor, the project area is defined as the Savannah

Harbor Entrance Channel (stations 0+000 to -60+000B), the designated offshore disposal area shown on the contract drawings, and transit routes. For Brunswick Harbor, the project area is defined as the Brunswick Harbor Entrance Channel (stations 0+000 to -53+000B), the designated offshore disposal area shown on the contract drawings, and transit routes. If right whale occurrence/distribution information is not available from the RWEWS due to severe weather restrictions, then vessel speeds will be restricted to 5 knots (or minimum safe speed) during night operations. It is currently expected that the RWEWS will not be in effect in Savannah and will be in effect in Brunswick for December through March. No aerial survey will be required when the RWEWS is not in effect. Nighttime speeds will still be restricted to 5 knots or less (or minimum safe speed) during times when the RWEWS is not in effect only if other information indicates right whales are in the project area.

6.1.2 The requirement for nighttime speed restrictions will be available from the Contracting Officer's Representative (OP-NN) or the RWEWS on a daily basis. Previous right whale monitoring along the Georgia coast indicates that for Savannah Harbor the dredging Contractor might expect up to 8 nights of reduced speed operations between the months of 1 December and 31 March. For Brunswick Harbor, the dredging Contractor might expect up to 13 nights of reduced speed operations between the months of 1 December and 31 March. Contractors should also expect at least 22 days of additional reduced speed operations between the period of 1 December and 31 March due to weather restricting RWES aerial surveys.

6.1.3 OMITTED ~~For the duration of the contract, a NMFS-approved endangered species observer with at sea large whale identification experience shall maintain a survey for right whales on the dredge bridge/observation deck whenever the dredge is in transit during daylight hours between 1 December and 31 March. Monitoring on the dredge by dredge crew personnel will not meet the whale monitoring requirement.~~

6.1.4 During daylight hours, the dredge operator must take necessary precautions to avoid whales. If whales have been spotted within 15 nautical miles of the project area in the previous 24 hours, then the dredge must slow down to 5 knots or less when transiting to and from the dump site during evening hours or during daylight hours when there is limited visibility due to fog or sea states of greater than Beaufort 3.

6.1.5 The hopper dredge shall maneuver so as to not get closer than 750 yards of a right whale.

6.2 Sea Turtles:

6.2.1 The Contractor shall arrange for National Marine Fisheries Service (NMFS) approved observers to be aboard hopper dredges to monitor the dredged material, overflow and inflow screening, and dragheads for sea turtles and shortnose sturgeon and their remains. Weekly summary reports will be submitted to NMFS, Southeast Regional Office, and the COR by the observers to assess the monitoring effectiveness and sea turtle takes. A daily “Turtle Observation Reporting Log” shall be filled out detailing observations of debris and organisms entrained in the screens for each load. "Turtle Observation Reporting Log" shall contain a separate sheet for each day's work. At a minimum, it shall contain the following information: date, load numbers, weather conditions, water temperature (including surface or mid-depth), condition of screening, note as to whether there were any endangered species incidents, life forms entrained in the screening (including numerical quantity estimates per load and a general assessment of their condition - alive or dead), and a general assessment of debris encountered. The observer shall

complete a separate form completely describing each turtle take. A copy of this form shall be submitted to the COR as soon as possible after the take occurs. At a minimum, information provided shall include, species, age (adult, subadult, juv), where found, date and time found, load number, reach dredged, and a complete description of the take, including measurements, and age of the injury. The form shall include a turtle drawing on which the origin/configuration of any recovered turtle parts is indicated. The weekly summary report shall have attached to it a daily "Turtle Observation Reporting Log" for each day's observations during the week and reports for any turtle takes occurring during the week. Forms to be used by the turtle observers in recording observations providing the required reports are provided in Attachment 1 to Section 00800.

6.2.2 The trained turtle observers will preserve dead animals or sea turtle parts for identification, as appropriate, and will transport for rehabilitation any injured sea turtles. The Contractor shall provide a standard size refrigerator (approximately 18 cubic feet) for storage of sea turtle parts. Observers will measure, weigh, tag and release any uninjured turtles incidentally taken by the dredge. Tissue samples from all loggerhead sea turtles taken by the dredge will be collected and preserved in accordance with NMFS protocols (attached). Samples will be shipped to: Sea Turtle Program, NOAA/NMFS/SWFSC, Dr. Peter Dutton, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508.

6.2.2.1 When requested by the Contracting Officer, the observers will hold individual turtles aboard the dredge for examination by permitted sea turtle researchers.

6.2.3 Hopper Dredge Equipment: The hopper dredges shall be equipped with California type dragheads or other type draghead accepted for use by the NMFS. Hopper dredge dragheads shall be equipped with rigid sea turtle deflectors which are rigidly attached. No dredging shall be performed by a hopper dredge without a turtle deflector device that has been approved by the Contracting Officer. A conceptual design detail is shown in Attachment 1 to Section 00800, Figures 2 through 4.

6.2.3.1 Deflector Design: The leading vee-shaped portion of the deflector shall have an included angle of less than 90 degrees. Internal reinforcement shall be installed in the deflector to prevent structural failure of the device. The leading edge of the deflector shall be designed to have a plowing effect of at least 6″ depth when the drag head is being operated. Appropriate instrumentation or indicators shall be used and kept in proper calibration to insure the critical “approach angle.”

Information Only Note: The design “approach angle” or the angle of lower drag head relative to the average sediment plane is very important to the proper operation of a deflector. If the lower draghead pipe angle in actual dredging conditions varies tremendously from the design angle of approach used in the development of the deflector, the 6″ plowing effect does not occur. Therefore, every effort should be made to insure this design “approach angle” is maintained with the lower drag pipe.

6.2.3.2 If adjustable depth deflectors are installed they shall be rigidly attached to the drag head using either a hinged aft attachment point or an aft trunnion attachment point in association with an adjustable pin front attachment point or cable front attachment point with a stop set to obtain the 6″ plowing effect. This arrangement allows fine-tuning the 6″ plowing effect for varying depths. After the deflector is properly adjusted there shall be NO openings between the deflector and the drag head that are more than 4″ by 4″.

6.2.3.3 Deflector Device Drawings: If the Contractor proposes to use a hopper dredge for this work, detail drawings and calculations shall be submitted showing the proposed device and its attachment to the Contractor's equipment which ensures the 6-inch penetration of the deflector device at the maximum dredging depth. The Contractor's drawings shall include the approach angle for any and all depths to be dredged during the contract. A copy of the approved drawings and calculations shall be available on the vessel during the life of the contract. No dredging work will be allowed to commence until approval of the turtle deflector device.

6.2.3.4 Hopper Dredge Operation: The Contractor shall operate the hopper dredge to minimize the possibility of taking sea turtles and to comply with the requirements stated in the Incidental Take Statement provided by the National Marine Fisheries Service in their Biological Opinion.

6.2.3.4.1 When initiating dredging, suction through the dragheads shall be allowed just long enough to prime the pumps, then the drag heads must be placed firmly on the bottom. When lifting the dragheads from the bottom, suction through the dragheads shall be allowed just long enough to clear the lines and then must cease. Pumping water through the drag heads shall cease while maneuvering or during travel to and from the disposal area.

Information Only Note: Optimal suction pipe densities and velocities occur when the deflector is operated properly. If the required dredging section includes compacted fine sands or stiff clays, a properly configured arrangement of teeth may enhance dredge efficiency which reduces total dredging hours and "turtle takes." The operation of a drag head with teeth must be monitored for each dredged section to insure that excessive material is not forced into the suction line. When excess high-density material enters the suction line, suction velocities drop to extremely low levels causing conditions for plugging of the suction pipe. Dredge operators should configure and operate their equipment to eliminate all low level suction velocities. Pipe plugging in the past was easily corrected when low suction velocities occurred by raising the drag head off the bottom until the suction velocities increased to an appropriate level. Arrangements of teeth and/or the reconfiguration of teeth should be made during the dredging process to optimize the suction velocities.

6.2.3.4.2 Raising the drag head off the bottom to increase suction velocities is not acceptable. The primary adjustment for providing additional mixing water to the suction line should be through water ports. To insure that suction velocities do not drop below appropriate levels, the Contractor's personnel shall monitor production meters throughout the job and adjust primarily the number and opening sizes of water ports. Water port openings on top of the draghead or on raised stand pipes above the draghead shall be screened before they are utilized on the dredging project. Screening details are provided in Paragraph 6.2.5. If a dredge section includes sandy shoals on one end of a track line and mud sediments on the other end of the track line, the Contractor should adjust the equipment to eliminate draghead pick-ups to clear the line.

6.2.3.4.3 Near the completion of each acceptance section, the Contractor shall perform sufficient surveys to accurately depict those portions of the acceptance section requiring cleanup. The Contractor shall keep the drag head buried a minimum of 6 inches in the sediment at all times. Although the over depth prism is not the required dredging prism, the Contractor shall achieve the required prism by removing the material from the allowable overdepth prism.

6.2.3.4.4 During turning operations the pumps must either be shut off or reduced in speed to the point where no suction velocity or vacuum exists.

6.2.3.4.5 These operational procedures are intended to stress the importance of balancing the suction pipe densities and velocities in order to keep from taking sea turtles. The Contractor shall develop a written operational plan to minimize the potential for turtle takes and submit it as part of the Environmental Protection Plan.

6.2.3.5 The Contractor must comply with all requirements of this specification and the Contractor's accepted Environmental Protection Plan. The contents of this specification and the Contractor's Environmental Protection Plan shall be shared with all applicable crew members of the hopper dredge.

6.2.4 Barge Screening: Dredging conducted by mechanical or hydraulic dredge and barge(s) shall require overflow screening if overflowing will occur. Barge(s) shall be equipped with grates and/or screening with openings no greater than 4" by 4". The method of screening selected shall depend on the construction of the barge(s). No barge overflow shall be allowed during transit to the disposal site.

a. Hydraulic cutter-section dredges(pipeline dredges) shall be equipped with metal grates and/or screening at the rock box with square openings no greater than 8" by 8".

b. Screenings and/or grates shall be approved prior to commencement of dredging by the Contracting Officer's Representative. The screening and/or grates shall sample 100 percent of the overflow and/or inflow, as appropriate, and shall remain in place for the duration of the job. The Contractor shall also install and maintain floodlights suitable for the illumination of the screens or grates to allow the observer(s) to safely monitor the contents during non-daylight hours.

6.2.5 Hopper Dredge Screening: The hopper dredge shall be equipped with screening or baskets to better monitor the intake and overflow of the dredged materials for sea turtles and their remains. The baskets or screening devices shall have openings of no greater than 4 inches by 4 inches and shall provide 100 percent coverage of the hopper inflow, except as noted below. The method selected shall depend on the construction of the dredge used and shall be approved prior to the commencement of dredging by the Contracting Officer's Representative. These screens should sample 100 percent of the overflow area and should be installed at the applicable area (i.e., the "skimmer funnels," the starboard and port sides of the vessels, etc.). Every effort possible should be made to effectively sample the turtle parts which travel through the hopper and exit in the overflow material.

6.2.5.1 100 percent inflow screening is required, and 100 percent overflow screening is recommended on all hopper dredges. If the configuration of a specific dredge does not allow 100 percent inflow screening, inflow screening can be reduced but 100 percent overflow screening is required. Prior approval of an alternate configuration must be obtained from the Corps and NMFS. Screening is only required when observers are required.

6.2.5.2 The Contractor shall install and maintain floodlights suitable for illumination of the baskets or screening, to allow the observer to safely monitor the hopper baskets during non-daylight hours or other period of poor visibility.

6.2.5.3 Screening of the dredge material shall be performed during dredging. Screens shall be placed over the points where the dredged material flows

into the hopper or at the overflow locations. The screens shall remain in place and shall be monitored for the entire hopper dredging period on a 24-hour basis. The purpose of the screens is to allow detection of the presence of turtles or turtle parts which are pumped into the hopper.

6.2.5.4 The water intake ports on the top of the draghead shall be screened with metal elliptical cages, or other suitable means to exclude sea turtles from entering the drag arm. All screens or cages shall have 4" by 4" or smaller openings. No dredging shall be performed by a hopper dredge without a turtle deflector device in place.

6.2.6 A preliminary report summarizing the results of the dredging and the sea turtle take and a copy of the Contractor's log regarding sea turtles must be submitted to the U.S. Army Corps of Engineers, Savannah District, ATTN: CESAS-OP-NN, P.O. Box 889, Savannah, Georgia 31402-0889, and NMFS within 15 working days of completion of any given dredging project. A final report including the weekly summary reports and "turtle observation reporting log" for each load will be submitted to the U.S. Army Corps of Engineers within 30 days after completion of the dredging project.

6.2.7 Hopper Dredge Operating Restrictions

6.2.7.1 Suspension of Dredging: Dredging shall be suspended if any of the following circumstances occur. (1) the taking of any two turtles of the following endangered species: hawksbills, greens, Kemp's Ridleys, or leatherbacks, (2) the taking of five loggerheads during the project, (3) the taking of any combination of five of the above mentioned turtle species, or (4) the taking of three shortnose sturgeons. The District shall coordinate with Division if more than one turtle is taken in any 24-hour period or when a total of three turtles are taken during a project. As a result, dredging may be suspended. Upon suspension of dredging, the District shall coordinate with Division to determine the appropriate action(s). Appropriate action includes the institution of measures to minimize the potential for further turtle takes. In which case, dredging operations will not resume until such actions are implemented. Potential actions include relative abundance and/or relocation trawling.

6.2.7.2 In the event that dredging is suspended for reasons outlined in paragraph 6.2.7.1, the Contractor will be paid at the contract price for Bid Item No. 0008, Stand By Time until such time dredging resumes or the Contractor is released.

7. TRAWLING REQUIREMENTS: In order to avoid the taking of turtles during dredging, the Government may decide that trawling is required. Two types of trawling may be performed: abundance and/or relocation trawling.

7.1 Abundance Trawling: Measurement for payment for abundance trawling will be on a lump sum basis for each initial 24-hour trawl, and on a daily basis for each additional 12-hour day extension of that work. Trawling shall be performed as described in paragraph 7.3, and the Contractor shall be directed to perform the work in writing by the Contracting Officer. Following the initial 24-hour trawl (12 hours per day covering two contiguous days) a day of trawling is defined as 12 hours of continuous trawling for each 24-hour day. Payment for abundance trawling will be made at the contract unit price in the schedule for each abundance trawl conducted by the Contractor as specified herein. Payment shall include all costs for furnishing labor, equipment, fuel, oil, materials, and supplies required for each day of trawling to determine the relative abundance of sea turtles in the channel area, and shall include the cost of handling and returning sea turtles to the area where they were captured and the cost of reporting as specified. Payment for each day of abundance trawling will only be made when that trawling is

directed in writing by the Contracting Officer.

7.2 Relocation Trawling: Measurement for payment for relocation trawling will be on a daily basis. A day of trawling is defined as 12 hours of continuous trawling. Trawling shall be performed as described in paragraph 7.3. Relocation trawling shall be performed 12 hours a day for each 24-hour day as directed in writing by the Contracting Officer. Payment for relocation trawling, as specified herein, will be made at the contract unit price per day on the bid form, which price shall include all costs for furnishing labor, equipment, fuel, oil, materials, and supplies required for trawling to remove sea turtles in the vicinity of the dredge as specified; and shall include the cost of handling and transporting sea turtles to the point of release (see paragraph 7.3.1.5) and the cost of reporting as specified. Payment for relocation trawling will only be made if the trawling is directed in writing by the Contracting Officer.

7.3 Hopper Dredging and Turtle Trawling:

7.3.1 Abundance and Relocation Trawling:

7.3.1.1 Government Option: Abundance/relocation trawling, as specified herein, will be at the option and the discretion of the Government to aid in preventing the taking of sea turtles during dredging operations with the approved turtle deflector in place. Within 48 hours after receiving written directions from the Contracting Officer, the Contractor shall begin trawling for turtles to determine their relative abundance in, or to relocate them from, the channel area. Abundance/relocation trawling shall be performed so as to not interfere with dredging operations in progress.

7.3.1.2 Trawling Period: Trawling may be conducted as described in a. or b. below.

a. Each separate abundance trawling or relocation trawling effort will start with 24-hours of trawling, equally divided over two contiguous days. During a 48-hour period there will be one 12-hour daytime trawl (6 a.m. - 6 p.m.) and one 12-hour nighttime trawl (6 p.m. - 6 a.m.). Trawling can start with either the daytime or nighttime trawl; however, each trawling effort must be on a separate day during the 48-hour period. Further, each subsequent day of abundance trawling, and all relocation trawling, will be defined as 12 hours of continuous trawling in each 24-hour period.

b. Abundance or relocation trawling may be conducted as 24-hours of trawling as a continuous trawl. However, two separate crews and two turtle biologists must be available on board to man two 12-hour shifts. Further, each subsequent day of abundance trawling, and all relocation trawling, will be defined as 12 hours of continuous trawling in each 24-hour period.

7.3.1.3 Trawling Requirements: Trawling operations will be conducted in the vicinity of dredge operations, but will maintain a safe distance from that dredge. Trawling shall be conducted with and against the tidal flow at a speed between 2.5 to 3.0 knots using repetitive 15- to 30-minute (total time) trawls in the channel or other work area. Trawls will be made in the center, green, and red sides of a channel, such that a sufficient number of trawls will be made in each of the stations for the survey so that the total width of the channel bottom is sampled. As much as practicable, the channel shall be trawled in random order consistent with NMFS survey protocol.

7.3.1.4 Trawling Nets: The trawler shall be equipped with two 60-foot flat-style trawling nets fabricated from 8-inch mesh (stretch). The nets shall be fitted with mud rollers and floats. The nets shall conform to the following:

a. Design: 4-seam, 4-legged, 2-bridle trawl net.

b. Webbing: 4-inch bar, 8-inch stretch top; 36 gauge twisted nylon dipped side; and 36 gauge twisted nylon dipped bottom.

c. Net Length: 60 feet from cork line to cod end.

d. Body Taper: 2 to 1.

e. Wing End Height: 6 feet.

f. Center Height: Dependent on depth of trawl, 14 to 18 feet.

g. Cod End: Length 50 meshes x 4 inches (16.7 feet); webbing 2-inch bar, 4-inch stretch, 84 gauge braid nylon dipped, 80 meshes around, 40 rigged meshes with 1/4 x 2-inch choker rings, 1 each x 4-inch at end; cod end cover - none; chaffing gear - none.

h. Head Rope: 60-foot combination rope (braided nylon with stainless steel cable center).

i. Foot Rope: 65-foot (2-inch) combination rope.

j. Leg Line: Top, 6 feet; bottom, 6 feet.

k. Floats: 12 tuna floats (football style), 7 inches in diameter, 9 inches long; center on top net, spaced 2 inches apart.

l. Mud Rollers: 22 each, 5 Inch diameter by 5.5-inch length, 3-foot spacing; attach with 3/8-inch polypropylene rope (replaced with Snap-On rollers when broken).

m. Tickler chain: None. (discontinued - but previously used 1/4 inch x 74-foot galvanized chain).

n. Weight: 20 feet of 1/4-inch galvanized chain on each wing, 40 feet per net looped and tied.

o. Door Size: 7 feet by 40 inches or 8 feet by 40 inches; 1-inch by 6-inch shoe; 3/8 inch high test chain bridles.

p. Cable Length: 7/16 inch cable, 240 to 300 feet (total bridle length), varies with bottom conditions.

q. Float Ball: None.

r. Lazy Lines: 1 inch nylon.

s. Pickup Lines: 3/8 inch polypropylene.

t. Whip Lines: 1 inch nylon.

7.3.1.5 Turtle Handling and Measurements: At least one crew member, who possesses the required permits for handling endangered species and who is experienced in turtle capture, shall be on board the trawler during the trawl. Each turtle that is caught shall be identified, measured, tagged, and released in the area of capture during abundance trawling. During relocation trawling, captured sea turtles shall be transported and released at a location at least 3 miles east of the easternmost point of the channel area. Turtle measurements shall be recorded and shall include, at a minimum, weight,

straight-line length, straight-line width, and tail length. Turtles shall be tagged with NMFS #681 Inconel tags in each of the front flippers according to NMFS protocol (see appropriate instructions included at the end of this section). Aseptic conditions shall be maintained for tags and tag attachment. Tissue samples from all captured loggerhead sea turtles will be collected and preserved in accordance with NMFS protocols (attached). Samples will be shipped to: Sea Turtle Program, NOAA/NMFS/SWFSC, Dr. Peter Dutton, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508. The Contractor shall be responsible for obtaining any and all permits related to trawling from the appropriate state and Federal agencies. All aspects of the trawling shall be coordinated with the U.S. Army Corps of Engineers, Savannah District; NMFS; GADNR; and other appropriate technical personnel.

7.3.1.6 Reporting: Immediately after completing each day of abundance/relocation trawling, the Contractor shall notify the Contracting Officer by telephone conveying the results of the trawl. A letter report documenting turtle captures, including the data gathered during the trawl, shall be furnished by the Contractor to the COR U.S. Army Corps of Engineers, Savannah District, within 24 hours after completing the abundance/relocation trawl (fax number 912-652-4105). Copies of the report shall also be furnished to NMFS and GADNR Coastal Resources Division.

7.3.2 Suspension of Dredging and Relocation Trawling: If the number of turtles netted during abundance trawling, as specified above, or turtle take by the hopper dredge, is considered excessive as determined by the Contracting Officer, then, at the Corps' discretion, the Contracting Officer may direct the Contractor to either immediately suspend dredging operations or to exercise the trawling option within 48 hours and continue dredging but only with continuous turtle trawling in the vicinity of the dredge (relocation trawling) to remove turtles from the channel area. Such trawling in the vicinity of the dredge shall be conducted in successive trawls, stopping after each 30-minute period to check the nets and remove captured turtles. As specified above for abundance trawling, captured sea turtles shall be identified, measured, tagged, transported, and released at a point near the area of capture, but relocation trawling will release captured turtles at a point at least 5 miles south of the channel during cold or falling water temperatures, and 5 miles north of the channel once water temperatures begin to rise in the spring. Nets used to trawl for turtles in the vicinity of the dredge shall be as specified above. During subsequent dredging, dredging may be suspended by the Contracting Officer if two sea turtles are taken by a dredge in any one day, when a total of five turtles are taken by a dredge for any one specific project, when a dredging window deadline is reached, or when the total number of turtles taken within Corps' South Atlantic Division is determined to be excessive ~~based upon the Regional Biological Opinion~~.

Should there be a tearing of nets, or breakdown of other equipment that would cause the trawler to leave the area where dredging is underway during any period of time when relocation trawling is required, the dredge may continue to operate for up to 48 hours, as long as no turtles are taken, and subject to the discretion of the Contracting Officer. Should there be dangerously high seas that would cause the trawler to leave the dredging area when relocation trawling is required, the dredge may continue to operate, as long as no turtles are taken; subject to the discretion of the Contracting Officer.

7.3.3 General Guidelines for Corps Discretionary Authority To Initiate Turtle Trawling: (NOTE: FOR INFORMATION ONLY) In general, there should be a heightened awareness of the potential to take turtles 1) any time that the water temperature reaches and/or exceeds 55 degrees F (13 degrees C), 2) work is ongoing in early December or late March, 3) other Districts in the Corps' South Atlantic Division (SAD) have taken, or are taking turtles, or 4) work has entered a rocky area or cleanup area where the deflector cannot rest

properly on the bottom. The following are some general trawling guidelines that the Corps may weigh in determining whether to trawl or not:

Trawling Guidelines

a. Currently, Savannah District utilizes a hopper dredging window which extends from December 15 to March 31. Initiation of trawling before, during and after this window will depend primarily on the water temperatures and the time of year and any turtles taken by the hopper dredge. Generally, if two turtles are taken in 1 day, or three turtles are taken by a project, turtle trawling will be required. However, conditions and turtle takes in our sister SAD Districts will also be used to evaluate the need for trawling.

b. Prior to December 15. If water temperatures are above 55° F (13° C), or if it is anticipated based on expected weather patterns that water temperatures will be above 55° F in early December, abundance trawling may be initiated prior to dredging to determine the relative abundance of turtles in the area proposed for dredging. The information obtained from the abundance trawling will be used to evaluate the need for relocation trawling when dredging activity begins. Relocation trawling is required with any hopper dredging conducted prior to December 15 (if approval for dredging is granted). Should the hopper dredge take a sea turtle prior to December 15, 24-hour relocation trawling will be required to be conducted through December 14.

c. December 15 - March 31. If temperatures are above 55°F, dredging may begin without trawling; however, the Savannah District reserves the right to require the initiation of relocation trawling based on the water temperatures and evidence of any turtle takes in our sister districts. However, under these circumstances, if a turtle is taken, the COR may direct that relocation trawling be initiated immediately and continue until temperatures drop below 55° F. and/or the COR directs that trawling may cease.

d. After March 31 (if an extension is granted). As above, water temperatures which are above 55°F. or rapidly rising and evidence of turtle takes in our sister SAD Districts may be used as information elements to determine the need to begin trawling. Depending on these factors, the district may require up to 3 days of relocation trawling and use the number of turtles netted to evaluate the risk of continued dredging and the need to initiate relocation trawling on a continuing basis. If a turtle is taken, relocation trawling may be required to begin immediately and continue until the completion or halting of dredging. Halting could be caused by either taking two (2) sea turtles by a dredge in 1 day, or a project total of three (3) turtles in any fiscal year for any given project, when a dredging window deadline is reached, or when the total number of turtles taken within SAD is determined to be excessive ~~based upon the Regional Biological Opinion.~~

8. MANATEES: A report summarizing manatee incidents in Savannah Harbor will be provided to the U.S. Fish and Wildlife Service, Division of Ecological Services, P.O. Box 12559, Charleston, South Carolina 29412; a report summarizing manatee incidents will be provided to the U.S. Fish and Wildlife Service, Division of Ecological Services, 4270 Norwich Street Extension, Brunswick, Georgia 31520-2523; and to the U.S. Army Engineer District, Savannah, Contract Administration, Attn: CESAS-OP-NN, P.O. Box 889, Savannah, Georgia 31402-0889.

9. PAYMENT:

9.1 No separate payment will be made for the work covered under this section, except as specifically provided for Bid Item No. 0016, Trawling Requirements. The Contractor shall be responsible for payment of fees

associated with environmental permits, application, and/or notices obtained by the Contractor. All costs associated with this section shall be included in the contract price. The Contractor shall be responsible for payment of all fines/fees for violation or non-compliance with Federal, State, Regional and local laws and regulations.

9.2 Hopper Dredging - Payment for Abundance or Relocation Trawling: The use of trawlers for abundance or relocation work will be paid at the Bid Item No. 0016 unit price. The Contracting Officer will make the determination if a separate trawler is needed for each hopper dredge being used on the job. Depending on site conditions, a maximum of one trawler per hopper dredge may be needed at any one time.

-- End of section --