

INVITATION NO. DACW64-88-B-0001

GULF INTRACOASTAL WATERWAY, TEXAS

SPECIFICATIONS

FOR

DREDGING

ARROYO COLORADO TO MUD FLATS AND
CHANNEL TO PORT MANSFIELD

IN

WILLACY AND KENEDY COUNTIES, TEXAS



U.S. ARMY ENGINEER DISTRICT. GALVESTON

November 1987

Rick Medina
409/766-3962

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

CAUTION TO BIDDERS

All information required by the terms of the Invitation must be furnished. MISTAKES OR OMISSIONS CAN BE COSTLY. Important items for you to check are included in but not limited to, those listed below. This checklist is furnished only to assist you in submitting a proper bid. Check as you read.

- ☐ Have you acknowledged all amendments?
- ☐ Have you completed the "Bidder Represents" portion of the bid form?
- ☐ Is your bid properly signed?
- ☐ If a bid guarantee is required, is it included with your bid? (A late bid guarantee is treated the same as a late bid)?
- ☐ Is your bid guarantee in the proper amount? (Usually 20% of total bid price).
- ☐ If your bid guarantee is in the form of a bid bond, is the bond properly signed by both the bidder and surety and are all required seals affixed?
- ☐ Is the name in which you submitted the bid the same on your bid as on your bid bond?
- ☐ If required have you entered a unit price for each bid item? (The Invitation will specifically state when this is necessary).
- ☐ Are decimals in unit prices in the proper places? Are your figures legible?
- ☐ Are the extensions of your unit prices, and your total bid price correct?
- ☐ Are all erasures or corrections initialed by the person signing the bid?
- ☐ I have not restricted my bid by altering the provisions of the Invitation.
- ☐ Is the envelope containing your bid properly identified that it is a sealed bid and does it contain the correct invitation number and bid opening time?
- ☐ Will your bid arrive on time? Late handcarried bids will not be considered. Late mailed bids may be considered if sent by Registered or Certified Mail; If late receipt was due to delay in mails, or if specific requirements have been met. (See the portion of the Invitation pertaining to "Late Bids and Modifications or Withdrawals".

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	DACW64-88-B-0001	☒ SEALED BID (IFB) ☐ NEGOTIATED (RFI)	13 Nov 87	1 of 137

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

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
DACW64-	N/A	CAC01

7. ISSUED BY	CODE	8. ADDRESS OFFER TO
DEPARTMENT OF THE ARMY GALVESTON DISTRICT CORPS OF ENGINEERS P.O. Box 1229 GALVESTON, TEXAS 77553-1229	W45VAK	DEPARTMENT OF THE ARMY GALVESTON DISTRICT CORPS OF ENGINEERS 444 BARRACUDA ROOM 159/120 GALVESTON, TEXAS 77550-1229

9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)
	MARY A. MONNELL	409-766-3851

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):

THIS IS, IS NOT, A 100% SET-ASIDE FOR SMALL BUSINESS CONCERNS.

Dredging Gulf Intracoastal Waterway, Texas, Arroyo Colorado to Mud Flats and Channel to Port Mansfield in Willacy and Kenedy Counties, Texas.

11. The Contractor shall begin performance within 5 calendar days and complete it within calendar days after receiving ☐ award, ☒ notice to proceed. This performance period is ☒ mandatory, ☐ negotiable (See *CSC-1).

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.)

☒ YES ☐ NO

12B. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

- A. Sealed offers in original and 0 copies to perform the work required are due at the place specified in Item 8 by 11:00 AM (hour) local time 9 Dec 1987 (date). If this is a sealed bid solicitation, offers will 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. Bids will be opened in Room 120. NOTE: SEE INSTRUCTIONS TO BIDDERS, PARAGRAPH 30 FOR THE LIMIT OF EXECUTING CONTRACT.
- B. An offer guarantee ☒ is, ☐ is not required.

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.

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

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)

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 requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS

SEE ATTACHED BIDDING SCHEDULE

- 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

S96412

24. SUBMIT INVOICES TO ADDRESS SHOWN IN
(4 copies unless otherwise specified)

ITEM

27

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

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

27. PAYMENT WILL BE MADE BY

US ARMY ENGINEER DISTRICT, FORT WORTH
ATTN: SWFRM-F P.O. BOX 17300
FORT WORTH, TEXAS 76102-0300

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 requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29 AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award constitutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)

31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA

31C. AWARD DATE

BY

BIDDING SCHEDULE
(To be attached to Bid Form)

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
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SCHEDULE NO. 1

1.	Mobilization and Demobilization	1	Job	Sum	\$ _____
2.	Dredging Main Channel Arroyo Colorado To Mud Flats Sections Nos 1-8	757,000	Cu.Yd.	\$ _____	\$ _____
3.	Dredging Channel to Port Mansfield Sections Nos 9-16	758,000	Cu.Yd.	\$ _____	\$ _____
4.	Dredging Port Mansfield Entrance Channel	86,000	Cu.Yd.	\$ _____	\$ _____
5.	Levees, Spillways and Ditches	1	Job	Sum	\$ _____
TOTAL SCHEDULE NO. 1					\$ _____

Adjustment in Bid Price if alternate disposal areas as contemplated by Construction Technical Provision 6-1.9 are authorized for use.

Deduct from Item No. 2	\$ _____	\$ _____
Deduct from Item No. 3	\$ _____	\$ _____
Deduct from Item No. 4	\$ _____	\$ _____

NET TOTAL SCHEDULE NO. 1 \$ _____

1. If the bidder proposes to use alternate disposal areas other than the areas shown on the drawings to be Government furnished, the adjustment in the bid price based on acceptance of the substitute areas shall be entered as an item on the Bidding Schedule and a net total shall be stated. The bid shall adequately describe such alternate areas and shall be accompanied by the written permission of the owners. Written permission of the owners shall be assigned to the bidder and not to a subcontractor. Description of substitute areas shall include location, size and capacity of each area. If the bidder proposes to use both areas, those shown on the drawings and substitute areas as described in Construction Technical Provision 6-1.9 of the specifications, he shall describe in his bid the portion or portions of all the areas to be used and the quantity of excavated material to be placed in each area. (ER 1130-2-307(12))

BIDDING SCHEDULE (Cont'd)

II. SARDA's AL 85-30, EXCLUSION OF DEBARRED AND SUSPENDED CONTRACTORS.

"By entering into this contract, the contractor certifies that neither it, 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 being suspended or debarred in accordance with FAR subpart 9.4."

NOTES:

1. ARITHMETIC DISCREPANCIES (15 JAN 85)(EFARS 14.201/90)

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

- (1) Obviously misplaced decimal points will be corrected;
- (2) In case of discrepancy between unit price and extended price, the unit price will govern;
- (3) Apparent errors in extension of unit prices will be corrected; and
- (4) Apparent errors in addition of lump-sum and extended prices will be corrected.

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

2. If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment of each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a prorata basis to every unit price in the bid schedule. (SWGPs)

3. Bidders must bid on all items and subitems except as otherwise specified. (SWGPs)

NOTE: THIS DOCUMENT (PAGES 1-6 IS TO BE EXECUTED AND SUBMITTED WITH BID.

REPRESENTATIONS AND CERTIFICATIONS

IFB NO. DACW64-88-B-0001

DUNS NUMBER: _____

PROJECT NAME/LOCATION: Dredging Gulf Intracoastal Waterway, Texas, Arroyo Colorado to Mud Flats and Channel to Port Mansfield in Willacy and Kenedy Counties, Texas
BIDDER'S NAME AND ADDRESS:

DATE: _____

The bidder makes the following representations and certifications as a part of the bid identified above. (Check appropriate boxes.)

1. **SMALL BUSINESS CONCERN REPRESENTATION (MAY 1966) (FAR 52.219-1)**

The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not, a small business concern and that ☐ all, ☐ not all, end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

2. **SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (APR 1984) (FAR 52.219-2)**

(a) **REPRESENTATION.** The offeror represents that it ☐ is, ☐ is not, a small disadvantaged business concern.

(b) **DEFINITIONS.**

"Asian-Indian American," as used in this provision, means a United States citizen whose origins are in India, Pakistan, or Bangladesh.

"Asian-Pacific American," as used in this provision, means a United States citizen whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.

"Native American," as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

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

(Representations and Certifications - continued.)

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (2) has its management and daily business controlled by one or more such individuals.

(c) QUALIFIED GROUPS. The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and other individuals found to be qualified by the SBA under 13 CFR 124.1.

3. WOMEN-OWNED SMALL BUSINESS REPRESENTATION (APR 1984) (FAR 52.219-3)

(a) REPRESENTATION. The offeror represents that it ☐ is, ☐ is not, a women-owned small business concern.

(b) DEFINITIONS.

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

"Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

4. CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984) (FAR 52.203-4)

(a) REPRESENTATION. The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror -

(Note: The offeror must check the appropriate boxes. For interpretation of the representation, including the term "bona fide employee," see Subpart 3.4 of the Federal Acquisition Regulation.)

(1) ☐ has, ☐ has not, employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not, paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) AGREEMENT. The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer -

(Representations and Certifications - continued.)

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

5. TYPE OF BUSINESS ORGANIZATION - SEALED BIDDING (APR 1985) (FAR 52.214-2)

The bidder, by checking the applicable box, represents that it operates as
☐ a corporation incorporated under the laws of the State of _____
☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

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

(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 and offer, or (iii) the methods or 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 being 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) above; 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) above _____

(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(Representations and Certifications - continued.)

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

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

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

7. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984) (FAR 52.222-22)

The offeror represents that -

(a) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity Clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive order No. 11114;

(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.

8.. PARENT COMPANY AND IDENTIFYING DATA (APR 1984) (FAR 52.214-8)

(a) A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the bidder. To own the bidding company means that the parent company must own more than 50 percent of the voting rights in that company. A company may control a bidder as a parent even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

(b) The bidder ☐ is, ☐ is not, (check applicable box) owned or controlled by a parent company.

(c) If the bidder checked "is" in paragraph (b) above, it shall provide the following information:

Name and Main Office Address of
Parent Company (Include
Zip Code)

Parent Company's Employer's
Identification Number

(Representations and Certifications - continued.)

(d) If the bidder checked "is not" in paragraph (b) above, it shall insert its own Employer's Identification Number on the following line _____

9. CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984) (FAR 52.222-21)

(a) "Segregated facilities," as used in this provision, 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, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies 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 offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will-

(1) Obtain identical certification from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certification in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS
FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

10. CLEAN AIR AND WATER CERTIFICATION (APR 1984) (FAR 52.223-1)

The Offeror certifies that -

(Representations and Certifications - continued.)

(a) Any facility to be used in the performance of this proposed contract is ☐, is not ☐, listed on the Environmental Protection Agency List Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

11. CERTIFICATION OR DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT THAT SUPPORTS TERRORISM (JAN 1987) (DFARS 52.225XX)

(a) Except as listed in paragraph (b) below, the bidder (offeror) certifies that no country identified by the Secretary of State as having repeatedly provided support for acts of international terrorism (i.e., Cuba, Iran, Libya, Syria or South Yemen) has a significant interest in the bidder (offeror) or in the entity which has mined, produced, or manufactured the product to be furnished under any contract resulting from this solicitation.

(b)

Firm/Country

INSTRUCTIONS TO BIDDERS
(DACW64- 88-B-0001)

1. ESTIMATED CONSTRUCTION COST (APR 1984) (FAR 36.204)

The estimated cost of the proposed construction is between \$ 1,000,000.00 and \$ 5,000,000.00.

2. SITE VISIT (APR 1984) (FAR 36.303(c)(5))

Bidder's attention is directed to the paragraph entitled SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK clause in the Contract Clauses. Information relative to site visit/inspection prior to bidding may be obtained between 8:00 AM and 4:00 PM Monday through Friday from:

CORPS OF ENGINEERS
AREA ENGINEER
Fort Point Area Office
P.O. Box 1229
Galveston, Texas 77553-1229

AC () Collect Calls Not Accepted.

3. AVAILABILITY OF PLANS AND SPECIFICATIONS (1 OCT 1984) (EFARS 53.2/9000-1(a)(2)(2))

(a) Full size sets of drawings \$11.00, half size sets of drawings \$5.50, and specifications will be furnished upon receipt of payment per set. If individual plan sheets are requested, they will be furnished at the rate of \$0.50 for half-size \$1.00 for full-size for each sheet requested, but with a minimum charge of \$1.00. The maximum charge shall not exceed the charge for a full set of plans. No refund of the payment for drawings will be made and the drawings need not be returned to the District Commander. Additional copies of the specifications alone will be furnished an applicant at the rate of \$6.00 per copy. Payment will be made by cash, check, or money order and delivered to the Contracting Division, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553-1229. Checks and money orders should be made payable to "U.S. Army Engineer District, Fort Worth."

(b) For information regarding obtaining copies of the plans and specifications call (409) 766-3846 or visit Room 159 Essayons Building, 444 Barracuda Ave., Galveston, Texas. Collect calls not accepted.

4. AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) (APR 1984) (FAR 52.210-2)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must

(Instructions to Bidders - continued.)

contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. In case of urgency, telephone or telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Commanding Officer
U.S. Naval Publication and Forms Center
5801 Tabor Avenue
Philadelphia, PA 19120
Telex Number-----834295
Western Union Number----(710) 670-1685
Telephone Number----- (215) 697-3321

5. AVAILABILITY OF DESCRIPTIONS LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II (APR 1984) (DFARS 52.210-7001)

Copies of the Acquisition Management Systems and Data Requirements Control List, DOD Directive 5000.19-L, Volume II, may also be ordered from the supply point listed herein. When requesting a data item description, the request shall cite the applicable data item number set forth in the solicitation.

6. BID GUARANTEE (APR 1984) (FAR 52.228-1)

(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 offeror (bidder) shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, 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) 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 give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the bid, the bidder will (1) allow 60 days for acceptance of its bid and (2) give bond within 10 days after receipt of the forms by the bidder.

(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.

(Instructions to Bidders - continued.)

7. PERFORMANCE AND PAYMENT BONDS (APR 1984) (FAR 28.102)

Within ten (10) days after the prescribed forms are presented to the bidder to whom is made for signature, a written contract on the form prescribed by the specifications shall be executed and two bonds, each with good and sufficient surety or sureties acceptable to the Government, furnished namely a performance bond (Standard Form 25) and a payment bond (Standard Form 25A). The penal sums of such bonds will be as follows:

(a) Performance Bonds. The penal sum of the performance bond shall be 100 percent of the original contract price.

(b) Payment Bonds. The penal amount of payment bonds shall equal -

(i) 50 percent of the contract price if the contract price is not more than \$1 million;

(ii) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) \$2 1/2 million if the contract price is more than \$5 million.

8. EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (15 JAN 1985) (EFARS 52.2/9108(f)(a))

Whenever a contract or modification of contract price is negotiated, the contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of paragraph (see Construction Clauses), EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE, contained in the Construction Special Clauses section of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the Area Office as herein-before stated.

9. TECHNICAL INFORMATION

(a) For technical information regarding the plans and specifications call Johnny Rozsypal AC (409) 766-6311. Collect calls not accepted. See paragraph 2 of INSTRUCTIONS TO BIDDERS.

(b) The Contractor will not be permitted to use self-propelled hopper dredges to perform the work specified herein.

10. EXPLANATION TO BIDDERS (APR 1984) (FAR 52.214-6)

Any prospective bidders 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.

(Instructions to Bidders - continued.)

11. PREPARATION OF BIDS - CONSTRUCTION (APR 1984) (FAR 52.214-18)

(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 item 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.

12. BIDDER'S QUALIFICATIONS (APR 1984) (FAR 9.1)

Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

13. SUBMISSION OF BIDS (APR 1984) (FAR 52.214-5)

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

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice, if such notice is received by the time specified for receipt of bids.

14. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (APR 1984) (FAR 52.214-7)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th); or

(Instructions to Bidders - continued.)

(2) Was sent by mail (or was a telegraphic bid if authorized), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) above.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be processed as if mailed late.

"Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) above, 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.

(f) 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 that person signs a receipt for the bid.

15. AMENDMENT OF INVITATION FOR BIDS (APR 1984) (FAR 14.208)

The right is reserved, as the interest of the Government may require, to revise or amend the specifications, or drawings, or both, prior to the date set for opening of bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids. If revisions and amendments are of a nature which requires material changes in quantities, or prices bid, or both, the date set for opening bids may be extended by such number of days, as in the opinion of the issuing officer, that will enable bidders to revise their bids. In such cases the amendment will include an announcement of the new date for opening bids.

16. ACKNOWLEDGEMENT OF AMENDMENTS TO INVITATIONS FOR BIDS (APR 1984) (FAR 52.214-3)

Bidders shall acknowledge receipt of any amendments to this solicitation (a) by signing and returning the amendment, (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (c) by letter or telegram. The Government must receive the acknowledgement by the time and at the place specified for receipt of bids.

(Instructions to Bidders - continued.)

17. CONTRACT AWARD - SEALED BIDDING - CONSTRUCTION (FEB 1986) (FAR 52.214-19)

(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.

18. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (DEC 1980) (DFARS 52.204-7004)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address.

The DUNS Number should be preceded by "DUNS:" If the offeror does not have a DUNS Number, it may obtain one from any DUN and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

19. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY. (APR 1984) (FAR 52.222-23)

(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: For the Non-SMSA Counties of Kenedy and Willacy, Texas.

Goals for minority participation for each trade	/	Goals for female participation for each trade
For Kenedy County = 44.2%	/	
For Willacy County = 72.9%	/	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.

(Instructions to Bidders - continued.)

(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 Director, Office of Federal Contract Compliance Programs, 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;
 - (i) Employer identification number of the subcontractor;
- (2) Estimated dollar amount of the subcontract;
- (3) Estimated starting and completion dates of the subcontracts; and
- (4) 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

~~20. NOTICE OF TOTAL SMALL BUSINESS SET ASIDE (APR 1984) (FAR 52.219-6)~~

~~(a) Definition.~~

~~"Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operations in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.~~

~~(b) General.~~

~~(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.~~

~~(2) Any award resulting from this solicitation will be made to a small business concern.~~

~~(c) Agreement.~~

(Instructions to Bidders - continued.)

~~A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.~~

21. SIZE STANDARDS FOR DREDGING (JAN 1986) (FAR 19.102)

A concern is small if its average annual receipts for its preceding 3 fiscal years did not exceed 9.5 million, and must perform at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern. As specified in the Standard Industrial Classification Manual-Code 1629.

22. DISPOSAL OF EXCAVATED MATERIAL (1 OCT 1984) (EFARS 53.2/9000-1(a) 4.)

The following owners in the vicinity of the work to be accomplished under this Invitation for Bids are known to desire fill material:

NAME

ADDRESS

If any of the areas owned by the above-listed owners are proposed to be utilized by the Contractor in the performance of the work, the provision for use of alternate areas (see Construction Technical Provisions) DISPOSAL OF EXCAVATED MATERIAL of the specifications will be applicable.

23. PREAWARD INFORMATION (1 OCT 1984) (EFARS 53.2/9000-1(a) 5.)

Each bidder shall, upon request of the contracting officer, furnish a statement of whether he is now or ever has been engaged in any work similar to that covered by the specifications herein, the dollar value thereof, the year in which such work was performed, and the manner of its execution, and giving such other information as will tend to show the bidder's ability to prosecute the required work. The "such other information" referred to above shall include but is not limited to the following:

(Instructions to Bidders - continued.)

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

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

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

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

24. SERVICE OF PROTEST (JAN 1985) (FAR 52.233-2)

Protests, as defined in section 33.101 of the Federal Acquisition Regulation, shall be served on the Contracting Officer by obtaining written and dated acknowledgement of receipt from Chief, Contracting Division, Corps of Engineers, Galveston District, 444 Barracuda Ave., Room 159, Galveston, Texas 77550.

25. SOLICITATION DEFINITIONS-SEALED BIDDING (APR 1985) (FAR 52.214-1)

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

26. FALSE STATEMENTS IN BIDS (APR 1984) (FAR 52.214-4)

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.

27. AFFILIATED BIDDERS (APR 1984) (FAR 52.214-17)

(a) Business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(Instructions to Bidders - continued.)

28. ~~U.S. Coast Guard Inspection and Certification Requirements. The United States Coast Guard Inspection and Regulation Subtitle II Requirements (46 U.S.C. 3301 et seq.) applies to this project. In the event the low bidder contemplates using a plant that requires U.S. Coast Guard certification to comply with this Act, in compliance with above, the low bidder shall within five (5) calendar days after bid opening submit a copy of said certificate to the Contracting Officer. Failure to produce the certificate within the required time shall subject the bidder to a determination of responsibility.~~

29. Paragraph 17 of (Contract Clauses - Section I) Davis-Bacon Act is applicable to this solicitation. Wage Rates will be incorporated by amendment, if they are not included in this solicitation.

30. The Contractor agrees that if he is the successful bidder he will, because of the urgency of the work: appear in person at the Galveston District Office (Room 159, Essayons Building) on 11 Dec 87, during business hours of 2:00 P.M. TO 4:15 P.M.), to execute construction contract, give performance and payment bonds on Government Standard Forms with good and sufficient surety, acknowledge the Notice to Proceed, submit safety and quality control plans, and commence work within Five (5) days after receipt of the Notice to Proceed as specified in Construction Special Clause 1.

(See Construction Special Clause 14, Contractor Quality Control, Paragraph (c)(1).)

(Instructions to Bidders - continued.)

SUGGESTION SOLICITATION FORM

The sole purpose of this form is to provide a means for submitting suggestions for improving future Corps of Engineers specification documents. This form shall not be used for requesting clarifications, waivers or deviations in current contracts.

Name of Submitter . Telephone No. (include area code)

Mailing Address (Street, City, State, Zip Code) Date of Submission

Contract No. Contract Title District

Type of Organization of Submitter

☐ KD Vendor ☐ Contractor ☐ Government employee

☐ Manufacturer ☐ Sub-Contractor ☐ Other (clarify)

PROBLEM AREA

- a. Paragraph number and wording in contract specification:
- b. Reason for recommendation:
- c. Recommended wording:

MAIL TO: Commander
U. S. Army Corps of Engineers
ATTN: SWDED-E
1114 Commerce Street
Dallas, Texas 75242-0216

INDEX OF
CONTRACT CLAUSES
CONSTRUCTION-INSIDE THE U.S
Issued by: Department of the Army, Corps of Engineers
Edition of 25 FEB 87

	<u>FAR</u>	<u>TITLE</u>
1.1	52.202-1 EFARS 52.101(a) & 52.105/90(a)	DEFINITIONS (ALTERNATE I) (DEVIATION)
1.2	52.202-1 EFARS 52.105/90(b)	DEFINITIONS (ALTERNATE I) (DEVIATION)
2.	52.203-1	OFFICIALS NOT TO BENEFIT
3.	52.203-3	GRATUITIES
4.	52.203-5	COVENANT AGAINST CONTINGENT FEES
5.	52.203-7	ANTI-KICKBACK PROCEDURE
6.	52.212-8	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS
7.	52.212-11	VARIATION IN ESTIMATED QUANTITY
8.	52.212-12	SUSPENSION OF WORK
9.	52.214-26	AUDIT-SEALED BIDDING
10.	52.214-27	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS-- SEALED BIDDING
11.	52.214-28	SUBCONTRACTOR COST OR PRICING DATA-- MODIFICATION--SEALED BIDDING
12.	52.215-1	EXAMINATION OF RECORDS BY COMPTROLLER GENERAL
13.	52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14.	52.219-9	SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ALTERNATE I)
15.	52.219-13	UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES
16.	52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
17.	52.222-3	CONVICT LABOR
18.		DAVIS-BACON ACT
19.	52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION
20.		APPRENTICES AND TRAINEES
21.		PAYROLLS AND BASIC RECORDS
22.		COMPLIANCE WITH COPELAND ACT REQUIREMENTS
23.		WITHHOLDING OF FUNDS
24.		SUBCONTRACTS
25.		CONTRACT TERMINATION; DEBARMENT
26.		DISPUTES CONCERNING LABOR STANDARDS
27.		COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS
28.		CERTIFICATION OF ELIGIBILITY
29.	52.222-26	EQUAL OPPORTUNITY
30.	52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION
31.	52.222-35	AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS
32.	52.222-36	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS
33.	52.223-2	CLEAN AIR AND WATER
34.	52.225-5	BUY AMERICAN ACT--CONSTRUCTION MATERIALS
35.	52.227-1	AUTHORIZATION AND CONSENT
36.	52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
37.	52-227-4	PATENT INDEMNITY-CONSTRUCTION CONTRACTS
38.	52.228-2	ADDITIONAL BOND SECURITY

	<u>FAR</u>	<u>TITLE</u>
39.	52.228-5	INSURANCE--WORK ON A GOVERNMENT INSTALLATION
40.	52.229-3	FEDERAL, STATE, AND LOCAL TAXES
41.	DFARS 52.232-7005	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS
42.	52.232-17	INTEREST
43.	52.232-23	ASSIGNMENT OF CLAIMS
44.	52.233-1	DISPUTES
45.	52.233-3	PROTEST AFTER AWARD
46.	52.236-2	DIFFERING SITE CONDITIONS
47.	52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK
48.	52.236-5	MATERIAL AND WORKMANSHIP
49.	52.236-6	SUPERINTENDENCE BY THE CONTRACTOR
50.	52.236-7	PERMITS AND RESPONSIBILITIES
51.	52.236-8	OTHER CONTRACTS
52.	52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS
53.	52.236-10	OPERATIONS AND STORAGE AREAS
54.	52.236-11	USE AND POSSESSION PRIOR TO COMPLETION
55.	52.236-12	CLEANING UP
56.	52.236-13	ACCIDENT PREVENTION (ALTERNATE I)
57.	52.236-15	SCHEDULE FOR CONSTRUCTION CONTRACTS
58.	52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
59.	52.243-4	CHANGES
60.	52.244-1	SUBCONTRACTS (FIXED-PRICE CONTRACTS)
61.1	52.245-2	GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)
61.2	52.245-4	GOVERNMENT-FURNISHED PROPERTY (SHORT FORM)
62.	52.246-12	INSPECTION OF CONSTRUCTION

	<u>FAR</u>	<u>TITLE</u>
63.	52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (ALTERNATE II)
64.	52.248-3	VALUE ENGINEERING - CONSTRUCTION
65.	52.249-1	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SHORT FORM)
66.	52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (ALTERNATE I)
67.	52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)
68.	52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES
69.	52.236-7000	COMPOSITION OF CONTRACTOR
70.	52.236-7001	MODIFICATION OF PROPOSALS - PRICE BREAKDOWN
71.	52.233-7000	CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING \$100,000
72.	52.236-7004	CONTRACT PRICES - BIDDING SCHEDULES
73.	52.243-7001	PRICING OF ADJUSTMENTS
74.	52.213-21	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
	EFARS	
75.	52.2/9110(1)	VARIATIONS IN ESTIMATED QUANTITIES - DREDGING
	FAR	
76.	~~52.219-14~~	~~LIMITATIONS ON SUBCONTRACTING~~

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1.1 DEFINITIONS (1984 APR) (ALTERNATE I) (DEVIATION)

FAR 52.202-1 (EPARS 52.101(a) and 52.105/90 (a))

(The following clause is applicable if the procurement instrument identification number is prefixed by the letters "DACW.")

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) "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.

(c) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Corps of Engineers Board of Contract Appeals, Office of the Chief of Engineers, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314.*

1.2 DEFINITIONS (1984 APR) (ALTERNATE I) (DEVIATION)

FAR 52.202-1 (EPARS 52.105/90 (b))

(The following clause is applicable if the procurement instrument identification number is prefixed by the letters "DACA.")

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "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.

(c) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Armed Services Board of Contract Appeals., 200 Stoval Street, Alexandria, Virginia 22332.*

2. OFFICIALS NOT TO BENEFIT (1984 APR) FAR 52.203-1

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.*

3. GRATUITIES (1984 APR) FAR 52.203-3

(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) above, 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 three nor more than ten 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.*

4. COVENANT AGAINST CONTINGENT FEES (1984 APR) FAR 52.203-5

(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.

5. ANTI-KICKBACK PROCEDURES (1987 FEB) FAR 52.203-7

(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 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,

- 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

- 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 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) above in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) above 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) above.

(4) Regardless of the contract tier at which a kickback was provided, accepted or charged under the contract in violation of paragraph (b) above, the contracting officer may --

(i) offset the amount of the kickback against any monies owed by the United States under this contract; and/or

(ii) direct that the Contractor withhold from sums owed the subcontractor, the amount of the kickback. The contracting officer may order that monies withheld under this subparagraph be paid over to the Government unless the Government has already offset those monies under subparagraph (i) above. In the latter case, the Contractor shall notify the contracting officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (5), in all subcontracts. #

6. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (1986 MAY)
FAR 52.212-8

The following clause is applicable if this is a rated order)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense and Allocations System regulation (15 CFR 350).

7. VARIATION IN ESTIMATED QUANTITY (1984 APR) FAR 52.212-11

(The following clause is not applicable to bid items listed in the "Variations in Estimated Quantities--Subdivided Items" clause and also is not applicable to contracts for dredging work which contain the "Variations in Estimated Quantities--Dredging" clause.)

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. #

8. SUSPENSION OF WORK (1984 APR) FAR 52.212-12

(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.*

9. AUDIT-SEALED BIDDING (1985 APR) FAR 52.214-26

(The following clause is applicable if this contract is in excess of \$100,000.)

(a) **Cost or Pricing Data.** If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

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

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

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

(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.*

**10. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--
MODIFICATIONS--SEALED BIDDING (1985 APR) FAR 52.214-27**

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than \$100,000 except that this clause does not apply to any modification for which the price is--

(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.*

**11. SUBCONTRACTOR COST OR PRICING DATA--MODIFICATION--SEALED
BIDDING (1985 APR) FAR 52.214-28**

(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 \$100,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable

profits, expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is--

- (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 15.804-4 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 exceeds \$100,000 when entered into.

**12. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1984 APR)
FAR 52.215-1**

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

13. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1985 JUN) FAR 52.219-8

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially

and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and 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 and small business concerns owned and controlled by socially and economically disadvantaged individuals.

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

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

14. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ALTERNATE I) (1984 APR) FAR 52.219-9

(The following clause is applicable if this contract (1) offers subcontracting possibilities, (2) is expected to exceed \$500,000, or \$1,000,000 in the case of construction of any public facility, (3) is required to include the clause in FAR 52.219-8 and (4) is formally advertised.)

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

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

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling

for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the 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 concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted;

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

(iii) Total dollars planned to be subcontracted to small disadvantaged 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 and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, 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 and small disadvantaged business concerns trade associations.)

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged 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 concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for

construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged 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, guides, and other data that identify small and small disadvantaged business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged 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 small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.
- (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual 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 and small disadvantaged 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 and small disadvantaged 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 and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, 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 provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

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

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

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

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

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

15. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (1986 AUG)

FAR 52.219-13

(a) "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

"Small Business concern", as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(d) The Contractor may rely on written representations by its subcontractors regarding their status as woman-owned businesses.

**16. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1984 APR)
FAR 52.222-1**

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

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

17. CONVICT LABOR (1984 APR) FAR 52.222-3

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

18. DAVIS-BACON ACT (40 U.S.C. 276a to a-7)

(a) Minimum wages.

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 equivalent 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, subject to the provisions of paragraph (a)(4) 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 weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on 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 classification and wage rates conformed under paragraph (a)(2) 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.

(2) (A) 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 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; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) 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, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(C) 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 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (a)(2)(B) and (a)(2)(C) 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.

(3) 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.

(4) 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 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.):

19 . CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME
COMPENSATION (1986 MAR) FAR 52.222-4

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

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

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime

Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

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

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

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

20. APPRENTICES AND TRAINEES

(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 or 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 above, shall be paid not less than the applicable wage rate on the 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 journeymen 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 on 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 on 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 on 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 on 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 part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.:

21. PAYROLLS AND BASIC RECORDS

(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 three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 (a)(4) 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. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(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 if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission 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 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

(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 the following:

(1) 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;

(11) 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 Regulations, 29 CFR Part 3;

- (111) 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 as 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 above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 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 authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. 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.*

22. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

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

23. WITHHOLDING OF FUNDS

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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the

Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, 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.*

24. SUBCONTRACTS

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", "Subcontracts", "Contract Termination-Debarment", "Disputes Concerning Labor Standards", "Compliance with Davis-Bacon and Related Act Requirements", and "Certification of Eligibility", and such other clauses as the Contracting Officer may, by appropriate instructions, require; and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.*

25. CONTRACT TERMINATION; DEBARMENT.

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", "Withholding", "Subcontractors", "Compliance with Davis-Bacon and Related Act Requirements", and "Certification of Eligibility", may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.*

26. DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general Disputes Clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. 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.*

27. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS

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

28. CERTIFICATION OF ELIGIBILITY

(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.*

29. EQUAL OPPORTUNITY (1984 APR) FAR 52.222-26

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

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

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(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 advertisement 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, Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(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, 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 subparagraph (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 agency 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.*

30. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION **(1984 APR) FAR 52.222-27**

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

"Director," as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer 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); and

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

(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 Director 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) above.

(6) Disseminate the Contractor's equal employee 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 onsite 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 toilet and necessary changing facilities 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). 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), 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) above, 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 Director 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.

(o) 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).

31. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (1984 APR) FAR 52.222-35

This clause is applicable pursuant to 41 C.F.R. 60-250, if this contract is for \$10,000 or more.)

(a) Definitions. "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause--

(1) Includes, but is not limited to, openings that occur in jobs categorized as--

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

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

- (i) Employment;
- (ii) Upgrading;

- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

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

(c) Listing openings.

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

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

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

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

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when:

- (i) the Government's needs cannot reasonably be supplied,
- (ii) listing would be contrary to national security, or
- (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its

own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

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

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

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

32. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (1984 APR)
FAR 52.222-36

(Contracts and subcontracts are exempt from the requirements of the following clause with regard to work performed outside the United States by employees who were not recruited within the United States).

(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 handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the 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 handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

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

(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 \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

33. CLEAN AIR AND WATER (1984 APR) FAR 52.223-2

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).*

34. BUY AMERICAN ACT--CONSTRUCTION MATERIALS (1984 APR) FAR 52.225-5

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," as used in this clause, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

"Domestic construction material," as used in this clause, 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 as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, at Subpart 25.2 of the FAR).*

35. AUTHORIZATION AND CONSENT (1984 APR) FAR 52.227-1

(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 (i) 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 specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Office 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 \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.*

36. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (1984 APR) FAR 52.227-2

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

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

(c) The Contractor agrees to include, and require inclusion of this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.001 of the Federal Acquisition Regulation (FAR).*

37. PATENT INDEMNITY-CONSTRUCTION CONTRACTS (1984 APR)
FAR 52.227-4

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.†

38. ADDITIONAL BOND SECURITY (1984 APR) FAR 52.228-2

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 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; or

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.†

39. INSURANCE--WORK ON A GOVERNMENT INSTALLATION (1984 APR)
FAR 52.228-5

(The following clause is applicable if the services involved are performed on a Government Installation.)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.†

40. FEDERAL, STATE, AND LOCAL TAXES (1984 APR) FAR 52.229-3

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

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

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

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

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

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

(d) The contract price shall be decreased by the amount of 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 \$100.

(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. #

41. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (1987 AUG) (DEV) (DFARS 52.232-7005)

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

(b) 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 standards of quality established under the contract as approved by the Contracting Officer. If requested by the Contracting Officer, the

Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. 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 may also be taken into consideration if--

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

(2) 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) 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 fifteen percent (15%) 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 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.

(d) 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.

(e) In making these progress payments the Government shall, upon request, reimburse the Contractor for the entire 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.

(f) 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. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) 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.*

42. INTEREST (1984 APR) FAR 52.232-17

(a) Notwithstanding any other clause of this contract, 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.*

43. ASSIGNMENT OF CLAIMS (1986 JAN) FAR 52.232-23

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referenced to as the "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.*

44. DISPUTES (1984 APR) FAR 52.233-1

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. 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 submitted 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) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that--

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (1) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 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 \$50,000, 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) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. 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.

(h) 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.*

45. PROTEST AFTER AWARD (1985 JUN) FAR 52.233-3

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) 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 requests 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 the request 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.*

46. DIFFERING SITE CONDITIONS (1984 APR) FAR 52.236-2

(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 inherent 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.*

47. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(1984 APR) FAR 52.236-3

(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.*

48. MATERIAL AND WORKMANSHIP (1984 APR) FAR 52.236-5

(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.†

49. SUPERINTENDENCE BY THE CONTRACTOR (1984 APR) FAR 52.236-6

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 work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.†

50. PERMITS AND RESPONSIBILITIES (1984 APR) FAR 52.236-7

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, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. 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.†

51. OTHER CONTRACTS (1984 APR) FAR 52.236-8

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 action that will interfere with the performance of work by any other contractor or by Government employees.†

52. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (1984 APR) FAR 52.236-9

(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.*

53. OPERATIONS AND STORAGE AREAS (1984 APR) FAR 52.236-10

(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.*

54. USE AND POSSESSION PRIOR TO COMPLETION (1984 APR) FAR 52.236-11

(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.*

55. CLEANING UP (1984 APR) FAR 52.236-12

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.*

56. ACCIDENT PREVENTION (ALTERNATE I) (1984 APR) FAR 52.236-13

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, 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 this purpose are taken.

(b) If this contract is with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, dated April 1981, as revised.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required.

After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, 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 base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(f) Before commencing the work, the Contractor shall--

(1) Submit a written proposal for implementing this clause; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.†

57. SCHEDULE FOR CONSTRUCTION CONTRACTS (1984 APR) FAR 52.236-15

(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.†

58. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (1984 APR)
FAR 52.236-21

(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, 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., form, fit, and attachment details) of materials of 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.

(h) This clause shall be included in all subcontracts at any tier.*

59. CHANGES (1984 APR) FAR 52.243-4

(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 a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed 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 submit any proposal under this clause within 30 days after (1) receipt of a written change order under paragraph (a) above or (2) the furnishing of a written notice under paragraph (b) above, 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.

60. SUBCONTRACTS(FIXED-PRICE CONTRACTS) (1986 JAN)

FAR 52.244-1

(The following clause is applicable if this contract is in excess of \$500,000.)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract--

(1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed \$25,000 including any fee;

(2) Is proposed to exceed \$100,000; or

(3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.

(c) The advance notification required by paragraph (b) above shall include--

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting--

(1) The principal elements of the subcontract price negotiations;

- (ii) The most significant considerations controlling establishment of initial or revised prices;
- (iii) The reason cost or pricing data were or were not required;
- (iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
- (v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;
- (vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of this contract.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.*

61.1 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (1984 APR) **FAR 52.245-2**

(The following clause is applicable when Government Property having an acquisition cost in excess of \$50,000 is furnished to or acquired by the Contractor.)

(a) Government-furnished property.

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

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

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

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

(b) Changes in Government-furnished property.

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

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

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

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

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or

attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

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

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

- (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in the Government upon--
 - (A) Issuance of the material for use in contract performance;
 - (B) Commencement of processing of the material or its use in contract performance; or
 - (C) Reimbursement of the cost of the material by the Government, whichever occurs first.

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

(e) Property administration.

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

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

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

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

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government

property is located for the purpose of inspecting the Government property.

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

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

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

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

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

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

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

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

61.2 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (1984 APR)

FAR 52.245-4

(The following clause is applicable when Government Property having an acquisition cost of \$50,000 or less is furnished to or acquired by the Contractor.)

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

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

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

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

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

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

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

62. INSPECTION OF CONSTRUCTION (1986 JUL) FAR 52.246-12

(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 inspection 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 (1) below.

(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, without additional charge, 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.*

**63. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS
(ALTERNATE II) (1984 APR) FAR 52.247-64**

(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

- (1) Small purchases as defined in 48 CFR 13;
- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
- (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime

64. VALUE ENGINEERING - CONSTRUCTION (DEVIATION) (1984 APR)

FAR 52.248-3

(The following clause is applicable if this contract is in excess of \$100,000.)

(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 VECF 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 VECF. The cost reduction associated with the VECF 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 VECF, 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 VECF 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 VECF, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECF's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer shall notify the Contractor of the status of the VECF within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall 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 VECF's expeditiously; however, it shall not be liable for any delay in action upon a VECF.

(2) If the VECF is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECF, 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 VECF effort.

(3) Any VECF 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 VECF, 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 VECF to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECF shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing.

(1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 55 percent for fixed-price

contracts or (11) 25 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--

- (1) Accept the VECP;
- (11) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (111) Provide the Contractor's share of savings by adding the amount calculated under subparagraph (1) above to the contract price or fee.

(g) **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.

(h) **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.):

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

(The following clause is applicable if this contract is not in excess of \$100,000.).

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and

obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

66. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)

(ALTERNATE I) (1984 APR) FAR 52.249-2

(The following clause is applicable if this contract is in excess of \$100,000.)

(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 (6) above; 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) 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.

(d) 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.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount 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 (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the 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 (e) above:

(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 (i) above; and

(iii) A sum, as profit on (i) above, 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.

(g) 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 (f) above, 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.

(h) 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.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) 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.

(k) 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.

(1) (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.

(m) 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.*

67. DEFAULT (FIXED-PRICE CONSTRUCTION) (1984 APR) FAR 52.249-10

(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 (xi) 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.

(d) 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.*

68. AUTHORIZED DEVIATIONS IN CLAUSES (1984 APR) FAR 52.252-6

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

69. COMPOSITION OF CONTRACTOR (JAN 1965) FAR SUPP 52.236-7000

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.*

**70. MODIFICATION OF PROPOSALS - PRICE BREAKDOWN (APR 1968)
FAR SUPP 52.236-7001**

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.*

71. CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING \$100,000 (FEB 1980) FAR SUPP 52.233-7000

(The following clause is applicable if this contract is expected to exceed \$100,000 and the procurement instrument identification number is prefixed by the letters "DACA.")

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding \$100,000 shall bear, at the time of

submission, the following certification given by a senior company official in charge at the plant or location involved:

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; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)

(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(1) requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; and

(2) final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.*

72. CONTRACT PRICES - BIDDING SCHEDULES (1968 APR)

DFARS 52.236-7004

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed.*

73. PRICING OF ADJUSTMENTS (1984 APR) DFARS 52.243-7001

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the DoD FAR Supplement in effect on the date of this contract.*

**74. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
(1984 APR) FAR 52.215-22**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) 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.†

**75. VARIATIONS IN ESTIMATED QUANTITIES - DREDGING (1985 JAN HQ USACE)
EFARS 52.2/9110(1)**

~~†~~ Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of material within the required dredging prism varies more than fifteen percent (15%) above or below the stated estimated quantity within the required dredging prism, an equitable adjustment in the contract unit price will be made upon demand of either party. The equitable adjustment will be based upon any increase or decrease in costs due solely to the variations above one-hundred fifteen (115%) or below eighty five percent (85%) of the estimated quantity within the required dredging prism. Any equitable adjustment in the contract unit price will also apply to that part of the actual quantity of allowable overdepth material above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity.

~~(h) If the quantity variation is such as to cause an increase in the time necessary for completion, the contracting officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.~~

~~When alternate 1 or 2 of 52.2/9110(a) is used, subparagraph 52.2/9110(1)(h) above shall be omitted.~~

(DREDGING)

U.S. Department of Labor



GENERAL WAGE DECISION NO. AL87-27

Supersedes General Wage Decision No. AL86-27

State: ALABAMA, ARKANSAS, FLORIDA, (West of the Aucilla River), GEORGIA (West of the Aucilla and Ocumilgee Rivers within the boundaries of the Mobile District of the Corps of Engineers), KENTUCKY, LOUISIANA, MISSISSIPPI, TENNESSEE, AND TEXAS

County(ies):

Construction
Type:

DREDGING PROJECTS

Construction

Description: DREDGING PROJECTS (EXCLUDING SELF-PROPELLED HOPPER DREDGES) along the Gulf of Mexico Coast Area including the Mississippi River and its tributaries to the Ohio River.

Modification Record:
No.

Publication Date _____ Page No.(s)

... REDUCED AT GOVERNMENT EXPENSE

AL87-27

	BASIC HOURLY RATES	FRINGE BENEFITS
DREDGES 16" AND OVER:		
Leverman	6.10	
Dredge Tender Operator	5.14	
First Assistant Engineer	6.06	
Second Assistant Engineer	5.50	
Third Assistant Engineer	5.06	
Deckhand	3.88	
Shoreman	3.90	
Fireman	4.40	
Oiler	4.00	
Truck Driver	3.90	
Welder	5.47	
DREDGES UNDER 16":		
Leverman	4.25	
Dredge Tender Operator	3.60	
Deckhand	3.35	
Oiler	3.50	
Welder	3.80	
HYDRAULIC DREDGING:		
First Cook	3.90	
Second Cook	3.65	
Cook's Helper - Mess Person	3.35	
Janitor - Cabin Person	3.85	
Handyman	4.33	
DERRICK OPERATOR	5.38	
DOZER OPERATOR	5.53	
MARSH BUGGY DRAGLINE:		
Operator	6.70	
Oiler	6.33	

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) (11)).

U.S. Department of Labor



GENERAL WAGE DECISION NO. TX87-29

Supersedes General Wage Decision No. TX86-29

State: TEXAS

County(ies): ZONE 1 - Brooks, Duval, Jim Hogg, Kenedy, Starr,
Willacy & Zapata
ZONE 2 - Cameron, Hidalgo & Webb

Construction
Type: Heavy & Highway

Construction
Description: Heavy (excluding tunnels & dams) and Highway Projects
(does not include building structures in rest area projects) &
Incidental Shore Work

Modification Record:

No.
1

Publication Date
Feb. 6, 1987

Page No.(s)
998

PRODUCED AT GOVERNMENT EXPENSE

U.S. Department of Labor

TX87-28

	Basic Hourly Rates (ZONE 1)	Basic Hourly Rates (ZONE 2)
ASPHALT RAKER	5.65	6.00
ASPHALT SHOVELER	-	5.35
CARPENTER	6.00	7.50
CONCRETE FINISHER (PAVING)	-	6.25
CONCRETE FINISHER HELPER (PAVING)	-	4.70
CONCRETE FINISHER (STRUCTURES)	6.50	6.40
CONCRETE FINISHER HELPER (STRUCTURES)	5.85	6.00
FORM BUILDER (STRUCTURES)	6.50	6.50
FORM LINER (PAVING & CURB)	-	5.10
FORM SETTER (PAVING & CURB)	-	5.25
FORM SETTER (STRUCTURES)	6.35	6.00
FORM SETTER HELPER (STRUCTURES)	5.05	5.20
LABORER, COMMON	4.75	4.70
LABORER, UTILITY	6.15	5.80
MECHANIC	7.15	9.00
MECHANIC HELPER	6.05	6.10
SERVICER	6.20	6.00
PIPELAYER	6.60	6.15
PIPELAYER HELPER	5.00	4.75
SPREADER BOX OPERATOR	-	5.45
*POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	6.40	6.40
Asphalt Paving Machine	7.80	6.35
Broom or Sweeper Operator	5.75	5.35
Bulldozer 150 HP & Less	6.40	5.60
Bulldozer over 150 HP	-	7.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1 1/2 CY)	6.50	6.25
Foundation Drill Operator (Crawler Mounted)	-	8.00
Foundation Drill Operator (Truck Mounted)	-	8.00
Front End Loader (2 1/2 CY & less)	6.20	6.15
Front End Loader (Over 2 1/2 CY)	6.65	7.00
Motor Grader Operator, Fine Grade	7.75	7.85
Motor Grader Operator	7.10	7.00
Roller, Steel Wheel (Plant-Mix Pave- ment)	5.10	4.70
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	5.55	5.10
Roller, Pneumatic (Self-Propelled)	5.35	5.30
Scrapers (17 CY & Less)	5.85	5.70
Scrapers (Over 17 CY)	6.35	6.50
Side Boom	-	5.25
Tractor (Crawler Type) 150 HP & Less	-	5.60
Tractor (Crawler Type) over 150 HP	-	6.35
Tractor (Pneumatic) 80 HP & Less	-	5.45
Tractor (Pneumatic) over 80 HP	-	7.35
Traveling Mixer	5.65	-
Trenching Machine, Light	7.25	-

PRODUCED AT GOVERNMENT EXPENSE



TX87-29

TRUCK DRIVERS:

Single Axle, Light	5.15	5.10
Single Axle, Heavy	-	5.15
Tanden Axle or Semi-trailer	-	5.15
Lowboy-Float	- 7.00	-
VIBRATOR OPERATOR (HAND TYPE)	4.95	-

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) (11)).

REDUCED AT GOVERNMENT EXPENSE

PART I CONSTRUCTION SPECIAL CLAUSES

TABLE OF CONTENTS

<u>Para. No.</u>	<u>Paragraph Title</u>	<u>Page No.</u>
1.	COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (1965 APR OCE)-----	1
2.	CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (JAN 1965)-----	1
3.	PHYSICAL DATA (APR 1984)-----	2
4.	MISPLACED MATERIAL (JAN 1965)-----	2
5.	SIGNAL LIGHTS (1965 JAN Rev 84 Jul)-----	3
6.	MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. 1 (DEC 1985)-----	3
7.	LIQUIDATED DAMAGES (APR 1984)-----	3
8.	QUANTITY SURVEYS (APR 1984)-----	4
9.	LAYOUT OF WORK (1965 APR OCE)-----	4
10.	INSPECTION (1965 APR OCE)-----	4
11.	FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE)-----	5
12.	SHOALING (1965 APR OCE)-----	6
13.	USE OF EXPLOSIVES (1985 JAN HQ USACE)-----	6
14.	CONTRACTOR QUALITY CONTROL (ER 1180-1-6)(31 JUL 86)-----	6
15.	EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (1985 JAN HQ USACE)-----	11
16.	ACCOMMODATIONS AND MEALS FOR INSPECTORS (1965 APR OCE)-----	12
17.	CONTINUITY OF WORK (1965 APR OCE)-----	12
18.	PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)-----	12
19.	INCLUSION OF LABOR PROVISIONS IN SUBCONTRACTS (SWDOC ltr. dtd. 1986 SEP)---	13
20.	PERFORMANCE EVALUATION OF CONTRACTOR (1985 JAN HQ USACE)-----	13
21.	CERF IMPLEMENTATION (1983 JUN OCE)-----	13
22.	ENVIRONMENTAL LITIGATION (1974 NOV OCE)-----	14
23.	CRANE BOOM STOPS (15 JUL 86)-----	14
24.	HAUL ROADS (1985 JAN HQ USACE)-----	16
25.	CONTINUING CONTRACT (1985 JAN HQ USACE)-----	16
26.	DAMAGE TO WORK (1966 MAR OCE)-----	18
27.	WORK IN QUARANTINED AREA (1968 MAY OCE)-----	18
28.	CERTIFICATES OF COMPLIANCE (1969 MAY OCE)-----	18
29.	TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (3 APR 1984)-----	19

PART II CONSTRUCTION TECHNICAL PROVISIONS

1-1.	DESCRIPTION OF WORK-----	1
2-1.	SECTIONS-----	8
3-1.	WORK COVERED BY CONTRACT PRICE-----	9
4-1.	ORDER OF WORK-----	9
5-1.	CHARACTER OF MATERIALS-----	9
6-1.	DISPOSAL OF EXCAVATED MATERIAL-----	10
7-1.	OVERDEPTH, SIDE AND END SLOPES-----	19
8-1.	MEASUREMENT AND PAYMENT-----	20
9-1.	REPORTING REQUIREMENTS-----	22

PART I
CONSTRUCTION SPECIAL CLAUSES

1. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (1965 APR OCE) (EFARS 52.2/9110(a)(a)).

The Contractor will be required to commence work under this contract within five (5) calendar days after the date of receipt by him of notice to proceed, to prosecute the said work at an average rate of not less than 300,000 cubic yards per month and to complete it within the number of days after the limiting date fixed for commencement, determined by applying the average monthly rate above stipulated to the total quantity of material actually removed and to be paid for under the contract; provided, that the quantity of material removed in any one month shall in no case be less than 200,000 cubic yards; provided further, that no waiver by the Contracting Officer of any failure of the contractor to make in any month or series of months the rate of progress required by this paragraph shall be construed as relieving the Contractor from the obligation to make up the deficiency in future months and to complete the entire work within the time allowed by the contract. The time thus determined for completion shall include final clean-up of the premises.

2. CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (JAN 1965) (DFARS 52.236-7002).

(a) One set of sepia of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the Office of the Corps of Engineers, Department of the Army, at 444 Barracuda, Essayons Building, Galveston, Texas and the Brownsville Area Office.

<u>TITLE</u>	<u>FILE</u>	<u>DRAWING NO.</u>
Gulf Intracoastal Waterway, Texas Dredging Arroyo Colorado to Mud Flats, and Channel to Port Mansfield.	IWW	1175-223 (in 11 sheets)

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the contracting officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

3. PHYSICAL DATA (APR 1984) (FAR 52.236-4). 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 government forces using cross sections and field surveys.

(b) Weather Conditions. Under ordinary conditions, the mean tidal range is about 1.5 feet. The height of tide is largely dependent on the force, direction and duration of the wind. Strong northerly winds may depress the water surface as much as, and in some instances more than, 3.0 feet below mean low tide, while southerly winds may raise the water surface as much as, and in some instances more than, 3.0 feet above mean low tide.

(c) Transportation Facilities. The sites of the proposed work (See inset "Location Map", Sheet 1 of plan sheets) are accessible by water via the Intracoastal Waterway from Port Isabel and via the tributary Arroyo Colorado from Rio Hondo, Texas. Port Isabel and Port Mansfield have adequate highway and public port facilities. Railroad, highway and port facilities are available at the Harlingen Turning Basin.

(d) Condition of Channel. The general shape of the existing section of channel to be dredged is shown by cross sections on the contract drawings.

(e) Channel Traffic. Traffic consists of tugs, with or without barges in tow, fishing and pleasure craft. Traffic will interfere to some extent with dredging operations.

4. MISPLACED MATERIAL (JAN 1965) (DFARS 52.236-7006). Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or Inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be

recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be 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.).

5. SIGNAL LIGHTS (1965 JAN Rev 84 Jul) (DAEN-PRZA MSG # F24246 dated 11 Jul 84).

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 pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working 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.

6. MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. 1 (DEC 1985) (DFARS 52.236-7009(b)(a)).

(a) All costs connected with the mobilization and demobilization of all of the Contractor's plant and equipment will be paid for at the contract lump sum price for this item. Sixty percent (60 %) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining Forty percent (40 %) will be paid to the Contractor upon completion of demobilization.

(b) In the event the Contracting Officer considers that the amount in this item (60 %), which represents mobilization, and (40 %) which represents demobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer at the completion of demobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

7. LIQUIDATED DAMAGES (APR 1984) (FAR 52.212-5).

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$ 327.00 for each day of delay.

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

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

8. QUANTITY SURVEYS (APR 1984)(FAR 52.236-16).

(a) Quantity surveys shall be conducted, and the data derived from the 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.

9. LAYOUT OF WORK (1965 APR OCE) (EFARS 52.2/9110(b)). The Contractor shall lay out his work from the Government established ranges and gauges indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, range markers and labor as may be required in laying out any part of the work from the ranges and gauges established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the contracting office until authorized to remove them. If such marks are destroyed by the Contractor or through his negligence prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due, or to become due, the Contractor.

10. INSPECTION (1965 APR OCE) (EFARS 52.2/9110(d)). The inspectors will direct the maintenance of the gauges, ranges, location marks and limit marks in proper order and position; but the presence of the inspector shall not relieve the contractor of responsibility for the proper execution of the work in accordance with the specifications. The Contractor will be required:

(a) To furnish, on the request of the Contracting Officer or any inspector, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the dredging plant as may be reasonably necessary in inspecting and supervising the work. However, the Contractor will not be required to furnish such facilities for the surveys, prescribed in the clause entitled "Final Examination and Acceptance."

(b) To furnish, on the request of the Contracting Officer or any inspector, suitable transportation from all points on shore designated by the Contracting Officer to and from the various pieces of plant, and to and from the dumping grounds.

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 cost thereof will be deducted from any amounts due or to become due the Contractor.

11. FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE) (EFARS 52.2/9110(e)).

(a) As soon as practicable after the completion of the entire work or any section thereof (if the work is divided into sections) as in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. Should any shoals, lumps, or other lack of contract depth be disclosed by this examination the Contractor will be required to remove same by dragging the bottom or 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 by 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. When the area is found to be in a satisfactory condition, it will be accepted finally. Should more than two sounding 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 sounding or sweeping operations will be charged against the Contractor at the rate of \$1,250.00 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is enroute to or from the site or held at or near the said site for such operations.

(b) Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error, 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.

12. SHOALING (1965 APR OCE) (EFARS 52.2/9110(f)). 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 contract price, within the limit of available funds, may be done if agreeable to both the Contractor and the Contracting Officer.

13. USE OF EXPLOSIVES (1985 JAN HO USACE) (EFARS 52.2/9110(h)).

When blasting is found to be necessary for removal of rock or other material the Contractor shall take all necessary precautions for the protection of individuals and property exposed to his operations.

(1) The amount of explosives permitted aboard the drill boat at any one time will be subject to the approval of the Contracting Officer, but in no case shall such amount exceed that required by the Contractor for one day's operations.

(2) Provision shall be made for jettisoning explosives aboard the drill boat in emergencies.

(3) Delay electric blasting caps shall be used in all blasts where the amount of explosives fired is in excess of 16 pounds so that no explosion in any one instant will exceed 16 pounds of explosives, and no series of explosions or total blast will exceed 100 pounds of explosives properly placed in drill holes.

(4) The amount of explosives to be used in a single blast in surface blasting, if found to be necessary, shall not exceed 15 pounds.

(5) The Contractor shall make necessary arrangements, as may be required by the Contracting Officer, to prevent damage to any vessel, moored or underway, building or structure and preserve the crew or occupants thereof from exposure to injury as a result of the Contractor's operations.

14. CONTRACTOR QUALITY CONTROL (ER1180-1-6) (31 JULY 86). The Contractor shall provide and maintain an effective quality control program that complies with the Contract Clause entitled INSPECTION OF CONSTRUCTION (1984 APR).

(a) GENERAL. The Contractor shall establish and maintain an effective quality control system in compliance with the contract clause entitled "Inspection of Construction". The quality control system shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations which comply with contract requirements. The system shall cover construction operations both onsite and offsite, and shall be keyed to the proposed construction sequence.

(b) COORDINATION MEETING. Before start of construction, the Contractor shall meet with the Contracting Officer (CO) or his authorized representative (COR) and discuss the Contractor's quality control system. During the

meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's management and control with the Government's inspection. Minutes of the meeting shall be prepared and signed by both the Contractor and the CO or COR. The minutes shall become a part of the contract file. There may also be occasions when subsequent conferences will be called to reconfirm mutual understandings.

(c) QUALITY CONTROL PLAN.

(1) General. The Government will consider an interim plan for the first 10 days of operation. However, the Contractor shall furnish for acceptance by the Government, not later than 10 days after receipt of Notice to Proceed, the Contractor Quality Control (CQC) Plan with which he proposes to implement the requirements of Contract Clause entitled "Inspection of Construction". The plan shall identify personnel, procedures, instructions records, and forms to be used. If the Contractor fails to submit an acceptable OC plan with the time herein prescribed, the CO or COR may refuse to allow construction to start if an acceptable interim plan is not furnished or withhold funds from progress payments in accordance with the Contract Clause entitled "Payments Under Fixed-Price Construction Contracts" until such time as the Contractor submits an acceptable final plan.

(2) The Quality Control Plan. This plan shall include as a minimum, the following:

(a) A description of the quality control organization, including a chart showing lines of authority and acknowledgement that the CQC staff shall implement the three phase control system for all aspects of the work specified and shall report to the project manager or someone higher in the Contractor's organization.

(b) The name, qualifications, duties, responsibilities and authorities of each person assigned a OC function.

(c) A copy of the letter to the OC manager signed by an authorized official of the firm, which describes the responsibilities and delegates the authorities of the OC manager shall be furnished.

(d) Procedures for scheduling and managing submittals, including those of subcontractors, offsite fabricators, suppliers and purchasing agents.

(e) Control testing procedures for each specific test.
(Laboratory facilities will be approved by the Contracting Officer).

(f) Reporting procedures including proposed reporting formats.

(3) Acceptance of Plan. Acceptance of the Contractor's plan is required prior to the start of Construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The Government reserves the right to require the Contractor to make changes in his CQC plan and operations as necessary to obtain the quality specified.

(4) Notification of Changes. After acceptance of the QC plan, the Contractor shall notify the CO in writing of any proposed change. Proposed changes are subject to acceptance by CO or COR.

(d) QUALITY CONTROL ORGANIZATION

(1) COC System Manager. The Contractor shall identify an individual, within his organization at the site of the work, who shall be responsible for overall management of COC and have the authority to act in all COC matters for the Contractor. This COC System Manager shall be acceptable to the CO or COR.

(2) Personnel. A staff shall be maintained under the direction of the system manager to perform all QC activities. The actual strength of the staff during any specific work period may vary to cover work phase needs, shifts, and rates of placement. The personnel of this staff shall be fully qualified by experience and technical training to perform their assigned responsibilities and shall be directly hired by and work for the prime contractor.

NOTE: Minimum staffing and qualifications may be specified.

(e) SUBMITTALS. Submittals shall be as specified in the Special Clause entitled "Submittals". The COC organization shall be responsible for certifying that all submittals are in compliance with the contract requirements.

(f) CONTROL. Contractor Quality Control is the means by which the Contractor assures himself that his construction complies with the requirements of the contract plans and specifications. The controls shall be adequate to cover all construction operations, including both onsite and offsite fabrication, and will be keyed to the proposed construction sequence. The controls shall include at least three phases of control for all definitive features of work as follows:

(1) Preparatory Phase. This phase shall occur prior to beginning any work on any definable feature of work. It shall include a review of contract requirements; a check to assure that all materials and/or equipment have been tested, submitted and approved; a check to assure that provisions have been made to provide required control testing; examination of the work area to ascertain that all preliminary work has been completed; and a physical examination of materials, equipment and sample work to assure that they conform to approved shop drawings or submittal data and that all materials and/or equipment are on hand. The Contracting Officer Representative (COR) shall be notified at least 24 hours in advance of beginning any of the required action of the preparatory phase. The results of the preparatory phase actions shall be made a matter of record in the Contractor's Quality Control documentation as required below. Subsequent to the preparatory phase and prior to commencement of work, the Contractor shall instruct applicable workers as to the acceptable level of workmanship required in his COC plan in order to meet contract specifications.

(2) Initial Phase. This phase starts as soon as a representative portion of the particular feature of work has been accomplished. This phase shall include examination of the quality of workmanship and a review of control testing for compliance with contract requirements. The work shall be inspected for use of defective or damaged materials, omissions, and dimensional requirements. The Contracting Officer's Representative shall be notified a least 24 hours in advance of the inspection of the initial phase. The inspection results shall be made a matter of record in the COC documentation as required below. The initial phase should be repeated for each new crew to work on site, or if acceptable standards of workmanship are not being met.

(3) Follow-Up-Phase. Daily inspections shall be performed to assure continuing compliance with contract requirements, including control testing, until completion of the particular feature of work. The inspections shall be made a matter of record in the COC documentation as required below. Final follow-up inspections shall be conducted and all deficiencies corrected prior to the start of additional features of work.

(g) TESTS.

(1) Testing Procedure. The Contractor shall perform tests specified or required to verify that control measures are adequate to provide a product which conforms to contract requirements. The Contractor shall procure the services of an industry recognized testing laboratory or he may establish an approved testing laboratory at the project site. A list of tests which the Contractor understands he is to perform shall be furnished as a part of the COC plan to the Contracting Officer. The list shall give the test name, specification paragraph containing the test requirements, and the personnel and laboratory responsible for each type of test. The Contractor shall perform the following activities and record and provide the following data:

(a) Verify that testing procedures comply with contract requirements.

(b) Verify that facilities and testing equipment are available and comply with testing standards.

(c) Check test instrument calibration data against certified standards.

(d) Verify that recording forms, including all of the test documentation requirements, have been prepared.

(2) Testing.

(a) Capability Check: The COR will have the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques.

(b) **Capability Re-Check:** If the selected laboratory fails the capability check, the Contractor will be assessed a charge of \$1,000 to reimburse the Government for each succeeding re-check of the laboratory or the checking of a subsequently-selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

(c) **Project Laboratory:** The COR will have the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests and to check the Contractor's testing procedures, techniques, and test result at no additional cost to the Government.

(d) **Transportation of Samples for Testing:** Costs incidental to the transportation of samples or materials will be borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government shall be delivered to the Corps of Engineers Division Laboratory, f.o.b., at the following address:

For delivery by mail:

Director, Southwestern Division Laboratory
U.S. Army Engineer Division, Southwestern
4815 Cass Street
Dallas, Texas 75235

For other deliveries:

N/A

(h) **COMPLETION INSPECTION.** At the completion of work or any increment thereof established by a completion time stated in the paragraph entitled "Commencement, Prosecution, and Completion of Work" or stated elsewhere in the specifications, the COC System Manager shall conduct a completion inspection of the work and develop a 'punch list' of items which do not conform to the approved plans and specifications. Such a list of deficiencies shall be included in the COC documentation, as required by paragraph (i) below, and shall include the estimated date by which the deficiencies will be corrected. The COC System Manager or his staff shall make a second completion inspection to ascertain that all deficiencies have been corrected and so notify the Contracting Officer's Representative. The completion inspection and any deficiency corrections required by this paragraph will be accomplished within the time stated for completion of the entire work or any particular increment thereof if the project is divided into increments by separate completion dates.

(i) **DOCUMENTATION.**

(1) The Contractor shall maintain current records of quality control operations, activities, and tests performed including the work of suppliers and subcontractors. (This recordkeeping requirement has been cleared by the Office of Management and Budget and has been assigned OMB Number 0704-0187. The OMB clearance expires on 30 June 1989). These records shall be on an acceptable form and indicate a description of trades working on the project, the numbers of personnel working, the weather conditions encountered, any delays encountered, and acknowledgement of deficiencies noted along with the

corrective actions taken on current and previous deficiencies. In addition, these records shall include factual evidence that required activities or tests have been performed, including but not limited to the following:

- (a) Type and number of control activities and tests involved.
- (b) Results of control activities or tests.
- (c) Nature of defects, causes for rejection, etc.
- (d) Proposed remedial action.
- (e) Corrective actions taken.

(2) These records shall cover both conforming and defective or deficient features and shall include a statement that supplies and materials incorporated in the work comply with the contract. Legible copies of these records shall be furnished to the CO daily.

(j) NOTIFICATION OF NONCOMPLIANCE. The Contracting Officer will notify the Contractor of any noncompliance with the foregoing requirements. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

15. EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE. (1985 JAN HQ USACE) (EFARS 52.2/9108(f)(b)).

(a) 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 when the Government can determine both ownership and operating costs for each piece of equipment or equipment groups of similar serial and series from the contractor's accounting records. When both ownership and operating costs cannot be determined from the Contractor's accounting records, equipment costs shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region VI. 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 retrospective pricing, the schedule in effect at the time the work was performed shall apply.

(b) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36 substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees are allowable. Costs for major repairs and overhaul are unallowable.

(c) When actual equipment costs are proposed and the total amount of the pricing action is over \$25,000, cost or pricing data shall be submitted on Standard Form 1411, "Contract Pricing Proposal Cover Sheet." By submitting cost or pricing data, the Contractor grants to the Contracting Officer or an authorizing representative the right to examine those books, records, documents and other supporting data that will permit evaluation of the proposed equipment costs. After price agreement the Contractor shall certify that the equipment costs or pricing data submitted are accurate, complete and current.

16. ACCOMMODATIONS AND MEALS FOR INSPECTORS (1965 APR OCE)
(EFARS 52.2/9110(g)).

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 the work on official business, meals of a quality satisfactory to the contracting officer. The meals furnished will be paid for by the Government at a rate of \$ 2.25 per person for each meal.

17. CONTINUITY OF WORK (1965 APR OCE)(EFARS 52.2/9110(c)). 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, unless prevented by ledge rock, 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 for any reason the gauges or ranges cannot be seen or properly followed.

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

The Contractor shall perform on the site, and with its own organization, work equivalent to at least forty (40) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

19. INCLUSION OF LABOR PROVISIONS IN SUBCONTRACTS (SWDOC ltr dtd 3 Sep 1986).

To show compliance with Contract Clause 24, SUBCONTRACTS, the Contractor should, within seven days after award of any subcontract either by himself or a sub-contractor of any tier, deliver to the Contracting Officer a completed Standard Form 1413. Nothing contained in this clause or any other provision of this contract shall create any contractual relation between any subcontractor and the Government.

20. PERFORMANCE EVALUATION OF CONTRACTOR (1985 JAN HQ USACE)(EFARS 52.2/9006)

As a minimum, the Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluation may be prepared at any time during contract performance when determined to be in the best interest of the Government. The format for the evaluation will be SF 1420, and the contractor will be rated either outstanding, satisfactory, or unsatisfactory in the areas of Contractor Quality Control, Timely Performance, Effectiveness of Management, Compliance with Labor Standard, and Compliance with Safety Standards. The Contractor will be advised of any unsatisfactory rating, either in an individual element or in the overall rating, prior to completing the evaluation, and all contractor comments will be made a part of the official record. Performance Evaluation Reports will be available to all DOD Contracting Offices for their future use in determining Contractor responsibility, in compliance with DFARS 36.201(c)(1).

21. CERF IMPLEMENTATION (1983 Jun OCE)(EFARS 52.2/9112)

If the work specified in this contract is performed by a hopper dredge, the owner must have an active Basic Ordering Agreement (BOA) for the hopper dredge on file with the Corps. The Contractor shall be obligated to make the hopper dredge available to serve in the Corps of Engineers Reserve Fleet (CERF) at any time that the hopper dredge is performing work under this contract. When the Contracting Officer is notified of the decision to activate this dredge into the CERF, he shall take appropriate action to release the dredge. He may then extend or terminate the contract to implement whichever action is in the best interest of the Government. The CERF contractor shall also be subject to the following conditions:

a. 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 ninety (90) days at the previously negotiated rate which appears on the schedule of prices in the BOA.

b. 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 time remaining under this contract at the date of notification plus up to one hundred eighty (180) days at the negotiated rate which appears on the schedule of prices in the BOA.

c. The CERF shall be activated by the Chief of Engineers or the Director of Civil Works; then the Ordering Contracting Officer will notify the contractor. From the time of notification, the selected hopper dredge(s) must depart for the emergency assignment within seventy-two (72) hours for CONUS or ten (10) days for OCONUS assignments.

d. A confirming delivery order will be issued pursuant to the Basic Ordering Agreement (BOA) by the Ordering Contracting Officer. Such delivery order shall utilize the schedule of rates in the BOA for the specific hopper dredges(s).

e. If during the time period specified in a, b, or c, above, a CERF vessel(s) is still required, the contract performance may be continued for additional time by mutual agreement.

22. ENVIRONMENTAL LITIGATION (1974 NOV OCE) (EFARS 52.2/9109(j))

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

(b) The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

23. CRANE BOOM STOPS (15 Jul 86)(FAR 52.236-13)

The following requirements are to be used in lieu of section 18.C.19 of EM 385-1-1, U.S. Army Corps of Engineers, Safety and Health Requirements Manual:

1. All mobile cranes with cable-supported booms (except draglines) shall be equipped with boom stops to resist the boomfalling backwards. At the angle specified by the crane manufacturer, the boom stop shall limit the movement of that portion of the boom below the point at which the boom stop acts on the boom. The boom stops shall provide energy withstanding resistance to the backward movement of the boom through an angular movement of approximately the last 5 degrees (over travel) about the boom foot bin.

2. The boom stop manufacturer shall certify that the boom stop has been designed, functionally tested and manufactured such that it will fulfill the requirement of SAE J220, Crane Boom Stops (May 1971). (Pre 1971 cranes will essentially meet the requirements of SAE J220 except for paragraph 4.1). Also, a crane/boom stop field test will be conducted. The object of this test is to verify the proper setup of the boom stops and functioning of the boom hoist disengaging device. This test will be conducted prior to initiating the load performance test required by EM 385-1-1 sections 18.C.01 and 18.D.01. Deficiencies noted should be corrected prior to the load performance test. Test procedures are as follows:

- Step 1: Check for availability of operator manual(s).
- Step 2: Make sure crane is level with outriggers (if so equipped) in place.
- Step 3: Check boom and boom stops for misalignment, bent parts and other physical damage.
- Step 4: Check boom stop pins (at connections) for lubrication, wear and damage.
- Step 5: Check boom angle indicator with inclinometer for correctness.
- Step 6: Check boom hoist disengaging device for proper adjustment and proper angle in accordance with the operator manual(s).
- Step 7: Check for proper operational setup of the boom stops and boom hoist disengaging device by physically booming up the boom just to the point where the boom and boom stops touch for cantilever/scissors type or to the point of compression of telescoping types as long as the boom does not go beyond the point of operation of the boom hoist disengaging device. It is not the intent of this test to override the boom hoist disengaging device.

3. By 1 July 1988 all cranes with cable supported booms (except draglines) shall be equipped with a properly functioning boom hoist disengaging device which shall automatically and completely disengage the boom hoisting power from the boom hoist drum when the boom has reached its highest rated angle. When power is thus disengaged, the boom hoist drum shall automatically be restrained from motion in the lowering direction under any rated condition.

4. All cranes will at all times have a current set of operator manual(s) (instructions) for the particular model/type/class crane. Operator manual(s) MUST be located in the crane cab prior to testing and must remain there. When operator manual(s) are not in the language of the operator, basic operating instructions must accompany the manual and be presented in a manner (language and/or diagrams, pictures, sketches, etc.) the operator can comprehend. If the manual(s) and/or basic operating instructions become unavailable due to unusual circumstances (stolen, lost, mutilated, destroyed, etc.) then a deadline for replacement will be established by the designated authority.

24. HAUL ROADS (1985 JAN HO USACE) (EFARS 52.2/9008)

Whenever practical, one-way haul roads shall be used on this contract. Haul roads built and maintained for this work shall comply with the following:

a. One-way haul roads for off-the-road equipment; e.g., belly dumps, scrapers, and off-the-road trucks shall have a minimum usable width of 25 feet. One-way haul roads for over-the-road haulage equipment only (e.g., dump trucks, etc.) may be reduced to a usable width of 15 feet.

When the contracting officer determines that it is impractical to obtain the required width for one-way haul roads (e.g., a road on top of a levee), a usable width of not less than 10 ft. may be approved by the Contracting Officer, provided a positive means of traffic control is implemented. Such positive means shall be signs, signals, and/or signalman and an effective means of speed control.

b. Two-way haul roads for off-the-road haulage equipment shall have a usable width of 60 feet. Two-way haul roads for over-the-road haulage equipment only may be reduced to a usable width of 30 feet.

c. Haul roads shall be graded and otherwise maintained to keep the surface free from potholes, ruts, and similar conditions that could result in unsafe operation.

d. Grades and curves shall allow a minimum sight distance of 200 feet for one-way roads and 300 feet for two-way roads. Sight distance is defined as the centerline distance an equipment operator (4.5 ft. above the road surface) can see an object 4.5 ft. above the road surface. When conditions make it impractical to obtain the required sight distance (e.g., ramps over levees), a positive means of traffic control shall be implemented.

e. Dust abatement shall permit observation of objects on the roadway at a minimum distance of 300 feet.

f. Haul roads shall have the edges of the usable portion marked with posts at intervals of 50 feet on curves and 200 feet maximum elsewhere. Such markers shall extend 6 feet above the road surface and, for nighttime haulage, be provided with reflectors in both directions.

25. CONTINUING CONTRACT. (1985 JAN HO USACE) (EFARS 52.2/9109(d)(a)).

(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. 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) (1) The sum of \$ 500,000 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 will be reserved for this contract.

(2) 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 (d) and (e) 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.

(c) (1) 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 change order to the contract.

(2) 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.

(d) (1) 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, for the Renegotiation Board, as in effect on the first day of the delay in such payment.

(2) 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.

(3) 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.

(e) 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.

(f) 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.

26. DAMAGE TO WORK (1966 MAR OCE)(EFARS 52.2/9109(c)(1)). The responsibility for damage to any part of the permanent work shall be as set forth in the clause of the contract entitled "Permits and Responsibilities." However, if, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood, hurricane or tornado, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to the Contract Clause entitled CHANGES (1984 APR), of the contract, will be made as full compensation for the repairs of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided, damage to all work (including temporary construction), utilities, material, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the contractor's expense, regardless of the cause of such damage.

27. WORK IN QUARANTINED AREA (1968 MAY OCE)(EFARS 52.2/9108(d)). The work called for by this contract involves activities in counties quarantined by the Department of Agriculture to prevent the spread of certain plant pests which may be present in the soil. The Contractor agrees that all construction equipment and tools to be moved from such counties shall be thoroughly cleaned of all soil residues at the construction site with water under pressure and that hand tools shall be thoroughly cleaned by brushing or other means to remove all soil. In addition, if this contract involves the identification, shipping, storage, testing, or disposal of soils from such a quarantined area, the Contractor agrees to comply with the provisions of ER 1110-1-5 and attachments, a copy of which will be made available by the Contracting Officer upon request. The Contractor agrees to assure compliance with this obligation by all subcontractors.

28. CERTIFICATES OF COMPLIANCE (1969 MAY OCE)(EFARS 52.2/9108(c)). Any certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in three copies. Each

certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

29. TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER. (3 APR 1984)(DAEN-ECC-0).

(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) (1984 APR). The listing below defines the monthly anticipated adverse weather for the contract period and is based upon NOAA or similar data for the geographic location of the project.

MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(7)	(6)	(4)	(4)	(5)	(6)	(5)	(7)	(10)	(7)	(6)	(7)

(b) The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgement of the notice to proceed and continuing throughout the contract on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (include weekends and holidays) and compared to the monthly anticipated adverse weather in subparagraph (a) above. For purposes of subparagraph (b), the term actual adverse weather days shall include days impacted by actual adverse weather days.

(c) The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in subparagraph (a) above have been incurred, the Contracting Officer will examine any subsequently occurring adverse weather days to determine whether a contractor is entitled to a time extension. These subsequently occurring adverse weather days must prevent work for 50 percent or more of the contractor's work day and delay work critical to the timely completion of the project. The Contracting Officer will convert any delays meeting the above requirements to calendar days and issue a modification in accordance with the Contract Clause entitled DEFAULT (FIXED-PRICE CONSTRUCTION) (1984 APR).

(d) The Contractor's schedule must reflect the above anticipated adverse weather delays on all weather dependent activities."

(e) Time extensions herein shall apply to the work only covered under Bid Item No. 5.

PART II
CONSTRUCTION TECHNICAL PROVISIONS

1-1. DESCRIPTION OF WORK

1-1.1 Work to be Done.

1-1.1.1 The Work consists of furnishing all plant, labor, materials and equipment and performing all work required by these specifications and the schedules and drawings forming parts thereof for dredging Gulf Intracoastal Waterway, Texas, and Channel to Port Mansfield as follows:

Required Depth Be- low MLT (Feet)	Required Width (Feet)	From Station	To Station	Distance Between Stations (Feet)
GULF INTRACOASTAL WATERWAY - ARROYO COLORADO TO MUD FLATS				
14	125	192+000	220+000	28,000
16	125	220+000	228+000	<u>8,000</u>
		SUBTOTAL		36,000
CHANNEL TO PORT MANSFIELD				
16	250	-2+200	0+00	2,200
18	100	38+000	44+000	6,000
18	100-125	44+000	45+036	1,036
18	125	2+980	6+000	3,020
18	125-200	6+000	6+333	333
18	200	6+333	7+470	1,137
18	200-719	7+740	8+970	1,500
14	0-276	0+000	2+980	2,980
14	0-268	41+256	43+994	2,738
14	0-256	41+256	44+014	2,758
14	0-276	0+023	2+980	<u>2,957</u>
		SUBTOTAL		24,459
		TOTAL		62,659

1-1.1.2 The varying bottom widths and lengths to be dredged are shown on the drawings referred to in Construction Special Clause 2, CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS. The Contractor shall remove sufficient material to provide the limiting side and end slopes described in Construction Technical Provision 6-1, OVERDEPTH, SIDE AND END SLOPES.

1-1.2 Archeological Sites and Shipwrecks. If during the dredging and disposal operations the Contractor encounters archeological sites and/or shipwrecks of a historical nature, he shall cease work immediately pursuant to the Contract Clause entitled SUSPENSION OF WORK (1984 APR) and so notify the Contracting Officer or his Authorized Representatives by the fastest available means. After investigation by the Contracting Officer, the Contractor will be instructed on how to proceed and if an unreasonable delay is incurred or the work is changed, the contract will be modified accordingly.

1-1.3 Location. Laguna Madre and adjacent areas in South Texas in Cameron, and Willacy Counties Texas.

1-1.4 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 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 the completion of the work, the Contractor shall promptly remove his plant, including ranges, buoys, piles and other marks placed by him under the contract.

1-1.5 Temporary Removal of Aids to Navigation. The temporary removal or changes in locations of channel markers may be required to facilitate dredging operations. The Contractor shall notify the Contracting Officer or his representative at least twenty-one (21) days prior to the date that the removal or change in location of any channel markers will be required in order for the U.S. Coast Guard to perform the work, and in order that navigation interests may be informed sufficiently in advance of the proposed removal or change in location.

1-1.6 Estimated Quantities.

1-1.6.1 The total estimated quantities of material necessary to be removed from the required dredging prism, exclusive of allowable overdepth, to complete the work described in Construction Technical Provision 1-1.1, Work to be Done, is 1,016,000 cubic yards, place measurement, including anticipated shoaling occurring prior to the dates of the before dredging sections.

1-1.6.2 The maximum amount of allowable overdepth dredging is estimated to be 611,000 cubic yards, place measurement.

1-1.7 Within the limit of available funds, the Contractor will be required to excavate the entire quantity of material necessary to complete the work specified in Construction Technical Provision 1-1.1, Work to be Done, be it more or less than the amounts above estimated. All work is to be done in accordance with the contract and at the contract price or prices, subject to the provisions of the Contract Clause entitled VARIATIONS IN ESTIMATED QUANTITIES - DREDGING (1985 JAN HQ USACE).

1-1.8 Notification Prior to Commencement of Dredging Operations. The Contractor shall notify the Area Engineer, Brownsville Area Office, 3505 Boca Chica Blvd., Suite 341 Brownsville, Texas 78521 in writing, at least ten (10) days prior to the commencement of dredging operations, the location or locations at which a dredge, or dredges, will be placed on the work. This information is required in addition to the progress charts and schedules provided for in the Contract Clause entitled SCHEDULE FOR CONSTRUCTION CONTRACTS (1984 APR).

1-1.9 Quality Control.

1-1.9.1 The Contractor shall establish and maintain a quality control system for dredging operations to assure compliance with contract requirements and record his inspections and tests under this system including but not limited to the following: Discharge effluent. The effluent from each spillway and the corresponding receiving water shall be sampled at least daily by the Contractor. Anytime the effluent density exceeds eight (8) grams per liter more than the corresponding density of the receiving body of water, the Contractor will immediately provide additional ponding capacity by raising the spillway invert, as necessary, or he will discontinue dredge disposal operations into the disposal area until the effluent density returns to the acceptable 8 grams per liter differential. The minimum frequency of sampling at the weir shall be increased when the effluent density increases or nears the maximum specified limit. Base samples of the receiving body of water shall be taken upstream or opposite to the direction of tidal flow where the discharge effluent enters the Gulf Intracoastal Waterway. The Contractor shall report the test results on the daily report of operation and furnish copies thereof to the Contracting Officer's Representative.

1-1.9.2 Each sample at the weir shall be made up by partially filling, without overflow, a one-quart container with the mixture flowing over the weir at not less than 3 different places in the length of the weir and combining the mixture in a bucket or other suitable container. Each receiving water sample shall be obtained in a bucket or other suitable container submerged to a depth of not over two feet. When settled solids are not present in the weir sample, the density shall be determined by the hydrometer method. When settled solids are present in the weir sample, the density shall be determined by both the hydrometer method and the weight-volume method.

1-1.9.2.1 Hydrometer Method. When the hydrometer method is used for density determination, a Taylor Soil Hydrometer, graduated to read in grams/liter of suspension, similar or equal to Curtin Matheson Scientific Hydrometers shall be used. The water sample shall be thoroughly mixed and transferred to a 1,000 ml laboratory cylinder and the hydrometer used as specified by the manufacturer.

1-1.9.2.2 Weight-Volume Method. When the weight-volume method is used for density determination, the total sample shall be measured to obtain volume in liters and weight in grams. Measurements shall be made with a 1,000 ml laboratory cylinder and a scale or balance capable of weighing the sample and cylinder to the nearest gram. The unit weight shall then be obtained by dividing the total weight in grams by the total volume in liters.

1-1.9.3 Government inspectors plan to inspect and take water samples no less than once a week. The Contractor will provide any assistance necessary to the Government inspectors. The Contractor shall construct and/or maintain a hand railed walk-way from the levee to each spillway and along the entire weir length when in use.

1-1.9.4 A copy of the records of inspections and tests, as well as records of corrective action taken, will be furnished the Government as directed by the Contracting Officer.

1-1.10 Project Bulletin Board. Unless the Contractor has a prominent place protected from the weather, readily accessible for viewing by employees of Contractor and subcontractors and to applicants for employment, suitable for the posting of the information required herein, the Contractor shall furnish, install and maintain, for the duration of this contract, a weather-tight bulletin board approximately three feet high by five feet wide having not less than two hinged or sliding glazed doors with provisions for locking. The bulletin board shall be mounted where and as approved by the Contracting Officer, in a prominent place accessible to employees of Contractor and subcontractors, and to applicants for employment. The bulletin board shall remain the property of the Contractor and shall be removed by him upon completion of the contract work. The following information which will be furnished by the Government to the Contractor (except safety posters), shall be posted in the prominent place as described or on the bulletin board and shall be maintained by the Contractor in easily readable condition at all times for the duration of the contract.

1-1.10.1 The Equal Employment Opportunity Poster.

1-1.10.2 The Wage Rate Information Poster (Form SOL-155).

1-1.10.3 The schedule of minimum wage rates for the contract as required by the Contract Clause entitled DAVIS-BACON ACT (1984 APR) (40 U.S.C. 276a to a-7).

1-1.10.4 Safety Posters.

1-1.10.5 "Hire the Handicapped" poster (ESA Publication 1406) pursuant to the Contract Clause entitled AFFIRMATION ACTION FOR HANDICAPPED WORKERS (1984 APR).

1-1.11 Environmental Control Measures. The Contractor shall comply with the following requirements to prevent degradation of the human environment.

1-1.11.1 The Contractor shall comply with all Federal, State and local laws, rules and regulations governing the disposal of materials and wastes in navigable waters including approval of the appropriate State Water Quality Board for the discharge of any materials and wastes in the navigable waters within its jurisdiction, and including the provisions of 33 USC 1342.

1-1.11.2 The Contractor shall provide and operate sanitation facilities that will adequately treat or dispose of sanitary wastes to conform with all Federal, State and local health regulations.

1-1.11.3 The Contractor shall comply with all Federal, State and local rules and regulations governing the control of air pollutants including those governing the burning of debris or wastes.

1-1.11.4 The Contractor shall perform his construction and dredging operations in a manner that will reduce turbidity to the lowest practicable level using the normal accepted dredging practices. Spillway discharges shall be controlled to confine material within the areas indicated on the drawings and in the specifications.

1-1.11.5 The Contractor shall take precautions in the handling or storage of hazardous materials to prevent discharges or spillages that would result in degradation of the water quality.

1-1.11.6 When depositing material in confined areas, the Contractor shall conduct his operations so as to reduce conditions conducive to the breeding of mosquitoes, flies and other disease-bearing insects and pests and to prevent or control the release of obnoxious odors and gases deleterious to human life and property including treatment of such gases as directed by the Contracting Officer.

1-1.11.7 The Contractor shall exercise precautions to prevent dredged material and dredge effluent from flowing into areas or waterways and ditches not designated for the deposit of dredged material or the flow of effluent runoff as required by Construction Technical Provision 6-1, DISPOSAL OF EXCAVATED MATERIAL.

1-1.11.8 Protection of Air Resources. The Contractor shall keep construction activities under surveillance, management and control to minimize pollution of air resources. All activities, equipment, processes, and work operated or performed by the Contractor in accomplishing the specified construction shall be in strict accordance with the State of Texas Clean Air Act implemented in 1967, and all Federal emission and performance laws and standards. Ambient Air Quality Standards set by the Environmental Protection Agency shall be maintained for those construction operations and activities specified in this section. Special management techniques as set out below shall be implemented to control air pollution by the construction activities which are included in the contract.

1-1.11.9 Particulates. Dust particles, aerosols, and gaseous byproducts from all construction activities, processing and preparation of materials, such as from asphaltic batch plants, shall be controlled at all times, including weekends, holidays and hours when work is not in progress.

1-1.11.10 Particulates Control. The Contractor shall maintain all excavations, stockpiles haul roads, permanent and temporary access roads, plant sites, disposal areas, borrow areas, and all other work areas within or outside the project boundaries free from particulates which would cause the air pollution standards mentioned in paragraph 1-1.11.8 above to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, light bituminous treatment, baghouse, scrubbers,

electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated at such intervals as to keep the disturbed area damp at all times. The Contractor must have sufficient competent equipment available to accomplish this task. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs. No separate payment or direct payment will be made for the cost of the work covered under Particulates Control and such work will be considered as a subsidiary obligation of the Contractor.

1-1.12 Bridge-to-Bridge Radio Telephone Equipment. All dredge and self-propelled attendant floating plant shall be radiotelephone equipped to comply with the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act (Public Law 92-63). This will require, as a minimum, the radiotelephone equipment capable of transmitting and receiving on 156.65 MHZ (Channel 13). Multichannel equipment will also require 156.8 MHZ (Channel 16). Dredge tugs and tenders will be considered towing vessels within the meaning of the Act.

1-1.13 The following submerged lines cross the area to be dredged:

<u>Approximate Station</u>	<u>Description</u>
192+000	Mobile Oil Corp. Permit No. 10401 (8 5/8" pipeline)

EVERY EFFORT HAS BEEN MADE TO GIVE ALL PERTINENT DETAILS ON THE LOCATION OF THE PIPELINES. THE DATA FURNISHED ON THE PLANS ARE BELIEVED TO BE SUBSTANTIALLY CORRECT. HOWEVER, THE EXACT LOCATIONS MAY VARY FROM THAT SHOWN ON THE DRAWINGS: THEREFORE THE CONTRACTOR SHALL COOPERATE WITH THE RESPECTIVE OWNERS TO ESTABLISH THE ACTUAL POSITION OF THE PIPELINES. THE U.S. CORPS OF ENGINEERS PERMITS OF THE RESPECTIVE PIPELINES AND PREVIOUS SURVEYS ARE AVAILABLE IN THE AREA OFFICE.

1-1.14 Dredged Spill Contingency Plan for Confined Disposal Areas. The Contractor will provide and maintain an effective dredge spill contingency plan that includes the following as a minimum:

1-1.14.1 The Contractor will be required to have 24-hour a day monitoring of each disposal area during disposal operations. The personnel monitoring the levees will be in radio contact with the dredge. The number and qualifications of personnel to be used for this purpose should be included in the plan.

1-1.14.2 The Contractor will be required to identify and have available the names and phone numbers of companies having portable hydraulic dredges or vacuum pumps ready to clean up any dredge material discharged from the disposal areas.

1-1.14.3 The Contractor will be required to identify and have available the names and phone numbers of companies having silt curtains which can contain any dredged material discharged from the disposal area.

1-1.14.4 The Contractor's Dredge Spill Contingency Plan will include the following procedures to be followed in the event of a spill:

1-1.14.4.1 The dredge will cease operations in the disposal area.

1-1.14.4.2 The Contractor will immediately notify the Contracting Officer who in turn will notify the U.S. Fish and Wildlife Service, the Texas Parks and Wildlife, and General Land Office.

1-1.14.4.3 The Contractor will submit a specific clean-up plan to the Contracting Officer for approval. No clean-up actions will commence until the plan has been approved by the Contracting Officer. The clean-up of misplaced material will be at the Contractor's expense.

1-1.14.5 The Contractor will be required to submit the Dredged Spill Contingency Plan to the Contracting Officer for approval.

2-1. SECTIONS. For purposes of acceptance, the dredging work under Items Nos. 2, 3 and 4 of the Bidding Schedule is divided into Sections, as follows:

<u>Section No.</u>	<u>From Station</u>	<u>To Station</u>	<u>Length of Section in Feet</u>	<u>(1)Prescribed (2)Depth (Cubic Yds)</u>	<u>(2)Allowable Overdepth (Cubic Yds)</u>	<u>(2)Total Estimated (Cubic Yds)</u>
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GULF INTRACOASTAL WATERWAY - PORT ISABEL TO MUD FLATS

1	192+000	195+000	3,000	33,000	26,000	59,000
2	195+000	200+000	5,000	65,000	46,000	111,000
3	200+000	205+000	5,000	55,000	45,000	100,000
4	205+000	210+000	5,000	61,000	46,000	107,000
5	210+000	215+000	5,000	33,000	46,000	79,000
6	215+000	220+000	5,000	64,000	46,000	110,000
7	220+000	225+000	5,000	82,000	46,000	128,000
8	225+000	228+000	<u>3,000</u>	<u>35,000</u>	<u>28,000</u>	<u>63,000</u>
		SUBTOTAL	36,000	428,000	329,000	757,000

CHANNEL TO PORT MANSFIELD - PORT MANSFIELD APPROACH CHANNEL - GIWW TURNOUTS

9	38+000	41+256	3,256	97,000	22,000	119,000
10	41+256	45+036	3,780	88,000	28,000	116,000
11	2+980	5+000	2,020	56,000	19,000	75,000
12	5+000	8+970	3,970	177,000	79,000	256,000
13	0+000	2+980	2,980	21,000	21,000	42,000
14	41+256	43+994	2,738	21,000	20,000	41,000
15	41+256	44+014	2,758	34,000	20,000	54,000
16	0+023	2+980	<u>2,957</u>	<u>38,000</u>	<u>43,000</u>	<u>81,000</u>
		SUBTOTAL	24,459	532,000	252,000	784,000

CHANNEL TO PORT MANSFIELD - ENTRANCE CHANNEL

17	-2+200	0+00	<u>2,200</u>	<u>56,000</u>	<u>30,000</u>	<u>86,000</u>
		SUBTOTAL	<u>2,200</u>	<u>56,000</u>	<u>30,000</u>	<u>86,000</u>
		TOTAL	62,659	1,016,000	611,000	1,627,000

(1) The term "prescribed depth" is synonymous with the terms "required depth". and "required dredging prism" used elsewhere in these specifications.

(2) Includes anticipated shoaling.

3-1. WORK COVERED BY CONTRACT PRICE.

3-1.1 The contract prices per cubic yard for "Dredging" shall include the cost of removal and disposal of all material as specified in Construction Technical Provision 5-1, CHARACTER OF MATERIALS, and Construction Technical Provision 6-1, DISPOSAL OF EXCAVATED MATERIAL. The contract prices for dredging shall also include all costs for the placing and the handling of pipelines to and at the disposal areas.

3-1.2 The contract price for "Mobilization and Demobilization" shall include all costs in connection with the mobilization and demobilization of all plant necessary to perform the work under the various bid items. The contract price shall include all transportation and other costs incidental to delivery of the plant and other equipment to the general work area in condition ready for operation and, after the completion of all work, for the removal of the plant and the equipment from the work sites.

3-1.3 The contract price for "Levees, Spillways and Ditches" shall include all such costs in connection with the design, construction and maintenance of the levees, spillways, and ditches until completion and final acceptance of the work in connection with "Levees, Spillways and Ditches".

4-1. ORDER OF WORK. The work shall be performed in the following order:

First Order: Dredge Section No. 17, Channel to Port Mansfield Entrance Channel.

Second Order: The levee work at Disposal Area No. 8 shall commence simultaneously with the dredging of Section No. 17.

Third Order: Upon completion and acceptance of dredging Section No. 17 and levee work at Disposal Area No. 8, the contractor shall commence dredging Sections Nos. 11 and 12 in numerically descending order. However, if levee work at Disposal Area No. 8 is not completed by the time Section No. 17 is completed, the contractor may commence dredging Sections 9, 10 and 13 thru 16 in any order desired. However, upon completion and acceptance of levee work at Disposal Area No. 8 and completion and acceptance of the dredging section currently being dredged, the contractor shall commence dredging Section No. 12.

Last Order: The remaining sections in any order desired.

5-1. CHARACTER OF MATERIALS.

5-1.1 The material to be removed to restore the depths within the limits specified in Construction Technical Provision 1-1., DESCRIPTION OF WORK, is that composed of shoals that have accumulated over a period of time, however, some virgin material may be encountered in the allowable overdepth and/or side slope dredging. Bidders are expected to examine the site of the work and the records of previous dredging, which are available in the Brownsville Area Office and after investigation decide for themselves the character of the materials.

6-1. DISPOSAL OF EXCAVATED MATERIAL.

6-1.1. General.

6-1.1.1. The Contractor shall inspect all proposed disposal areas to insure that using the areas for disposal operations will not place him in violation of any applicable Federal, State, or local statutes concerning fish and wildlife. Particular statutes which the contractor should consider include, but are not limited to, the Federal Migratory Bird Treaty Act and the Endangered Species Act of 1973.

6-1.1.2. The material excavated shall be transported and deposited in the disposal areas shown on the contract drawings. Except as otherwise noted material will not be deposited or allowed to flow into project channels or into any bayou or stream tributary to the waterway, or into any existing drainage outlet ditch, canal, water intake, or outlet facilities, nor shall materials be allowed to flow onto any improved areas including highways and roads in or adjacent to the disposal areas. In the event any stream, bayou drainage outlet, ditch, canal, water intake or outlet facility becomes shoaled as a result of the dredging or disposal operations, the contractor shall promptly remove these shoals and the material shall be placed in the disposal areas. Dragging or washing operations to remove the shoals will not be permitted. All holes dug on the banks for deadmen or anchorage shall be filled. The Contractor shall adequately inspect his disposal operations in the disposal area daily to reduce the possibility of accidental breaching of levees and spillway with resulting spillage of dredged materials outside the area. Should levee failures occur while materials are being pumped into the disposal areas, dredging operations shall be stopped immediately, and the deposit of material in the area shall not be resumed until the confining structures have been restored to a condition considered satisfactory by the Contracting Officer. Materials shall be deposited in such a manner that no water will be impounded and that natural drainage shall not be obstructed. Once disposal operations are completed in a confined area for which the disposal area is being used, the boards on the spillway of that disposal area shall be removed at a proper rate to allow drainage of the area. Every effort has been made to give all pertinent details on the location of utility pipelines, structures and other facilities which may be encountered in performing the levee and spillway work. The data furnished on the contract drawings are substantially correct. However, the contractor shall investigate existing conditions and satisfy himself as to the existence of any additional construction which may interfere with the work under these specifications.

confined areas all levee and spillway work required shall be completed and accepted prior to any disposal operations in that area. All confined areas shall be maintained in operational condition until completion and acceptance of all work under the contract.

6-1.2. Construction Special Clauses DAMAGE TO WORK is only applicable to damage of levees and other non-dredging items.

6-1.2.1. PARTIALLY EMERGENT UNCONFINED DISPOSAL AREAS. Disposal Area No. 6. The limiting lines of discharge denoting the disposal areas shall be prominently marked by the Contractor with conspicuous buoys or stakes at each corner and at every 1000 feet along back limit. No material shall be placed outside of these limiting lines of discharge which define the disposal area. Any material deposited in these areas shall be removed by the Contractor at no additional cost to the Government. The Contractor shall select his discharge points in order to best filter the material through the vegetation. The Contractor shall perform his operations in such a manner to prevent the material from flowing back into the Channel. When any of the dredged material becomes visually emergent along the back and end limiting lines of the areas, the Contractor shall relocate the point of discharge within the disposal areas as many times as necessary to prevent a build-up of material along the back and end limiting line. The Government will make periodic inspections of the disposal operations and the Contracting Officer may direct the Contractor to move the point of discharge if it is his determination the material is fanning out visually emergent along the above mentioned lines. Use of a spreader on the end of the pipe will be required. If levees are required, the material for construction shall be obtained from within the disposal area. When borrowing material adjacent to the levee, a minimum berm of 50 feet shall be provided between the tow of the levee and the borrow area. The Contractor shall submit his levee design for approval by the Contracting Officer. A minimum amount of 100,000 cubic yards of dredged material shall be deposited in Disposal Area No. ~~221~~.

6-1.2.2. ~~Disposal Area No. 218, 219, 220, and 221.~~ The limiting lines of discharge denoting the disposal areas shall be prominently marked by the Contractor with conspicuous buoys or stakes at each corner and every 1,000 feet along the back limit. No material shall be placed outside of these limiting lines of discharge which define the disposal areas. Any material deposited in these areas shall be removed by the Contractor at no additional cost to the Government. The Contractor shall perform his operation in such a manner to prevent the material from flowing back into the channel. When any of the dredged material becomes visually emergent along the back and end limiting lines of the areas, the Contractor shall relocate the point of discharge within the disposal areas as many times as necessary to prevent a build-up of material along the back and end limiting line. The Government will make periodic inspections of the disposal operations and the Contracting Officer may direct the Contractor to move the point of discharge if it is his determination the material is fanning out visually emergent along the above mentioned lines. Material shall be placed below an elevation of -3 feet (below M.L.T.) in Disposal Area No. 221. Material shall be discharged below the water surface in Disposal Areas Nos. 218 and 219. A maximum amount of 220,000 cubic yards of dredged material shall be deposited in Disposal Area

No. 221. No discharge shall be placed within a 1000 feet of the island in Disposal Area No. 220 near the vicinity of Channel to Mansfield Station 41+000 between 1 March and 31 August. Between 31 August and 1 March the Contractor shall place material along the perimeter of the island within the disposal area limits. No discharge will be allowed on the island.

6-1.2.3. Disposal Area No. 8 is a confined disposal area located south of the Channel to Port Mansfield and adjacent to and southeast of Port Mansfield. The northwest area within Disposal Area No. 8 shall be kept free of effluent and dredged material. The perimeter levee of Disposal Area No. 8 shall be raised to a minimum elevation of 22 feet above Mean Low Tide with a minimum crown width of 8 feet with slopes no steeper than one vertical to three horizontal. Reach of levee between Station 0+00 to Station 36+00 and Station 76+00 to Station 0+00 shall be hauled. The remaining levee repair shall be side casted - (Sta 36+00 to 76+00). Material for raising the levees shall be obtained from within the disposal area. Haul material required to build the levees shall be taken from the high mounds on the northern part of the disposal area. The material to be hauled shall be from an elevation no lower than +13 feet M.L.T. The area shall drain south towards the spillway. Any obstruction which may impede the flow of effluent and/or cause ponding shall be removed to ease the flow of effluent to the spillway. The existing spillway and outfall conduits shall be repaired and maintained to provide serviceable facilities until completion and acceptance of the work under the contract. Spillway details shall conform to Construction Technical Provision 6-1.4. The walkways and handrails from the levee to the spillway and along the entire weir length of the spillway shall be repaired by the contractor to ensure the safety of personnel working on the structure. All costs in connection with the above work shall be included in the contract price for "Levees, Spillways, and Ditches". A maximum amount of 331,000 cubic yards of dredged material shall be deposited in Disposal Area No. 8. The dredge pipeline route in open water from Section No. 12 to Disposal Area No. 8 shall be placed in such a manner not to interfere with private construction along the shoreline from Disposal Area No. 8 to the Turning Basin.

6-1.2.4. ~~Disposal Area No. 8~~ The excavated material shall be transported and deposited in the beach area and within the limits shown on the drawings. The area shall be plainly marked by the Contractor by conspicuous buoys and/or stakes. The Contractor shall limit deposit of the material to an elevation of seven (7) feet (Above Mean Low Tide) within the limits shown. Disposal operations shall commence at the southerly limit of the area and progress in a northerly direction until the material to be deposited in Disposal Area No. 2-A is exhausted.

6-1.3 Retaining Levees.

6-1.3.1. General. When the material is deposited in confined areas, all embankments or bulkheads needed for confining or grading the material, with necessary waste weirs, shall be designed, constructed and maintained by the Contractor until completion and final acceptance of the work under the contract and the cost thereof shall be included in the contract price for "Levees, Spillways, and Ditches". Levees shall be built to a minimum crown elevation as shown on the drawings. The crown width is depicted on the drawings. The levees shall be constructed with side slopes no steeper than

one vertical to three horizontal. Material for construction of levees will be hauled and shall be obtained from within the disposal areas. When borrowing material adjacent to the levee, a minimum berm of 50 feet shall be provided between the toe of the levee and borrow area. All borrow areas and areas to receive fill shall be stripped of vegetation in order to insure proper bonding of material. The borrow areas shall have minimum side slopes of one vertical to three horizontal. It is the intent of these specifications to construct the levees utilizing borrow materials at its natural moisture content. However, if in the Contracting Officer's opinion, the material becomes

excessively wetted or dried, the Contractor shall take whatever steps necessary to dry or wet the material before continuing with the construction of the levees. All levee and spillway work required for a disposal area shall be completed and accepted prior to any disposal operations in the area. All confined areas shall be maintained in operational condition until completion and acceptance of all work under the contract.

6-1.4 Spillways, Flumes and Outfall Facilities.

6-1.4.1. General. The location and dimensions of the existing drop inlet type spillways is shown on the drawings. All exposed structural steel members (vertical columns, horizontal braces, walkway supports and handrails) shall be sandblasted to bare metal and painted with the corrosion control material specified herein. The contractor shall follow the manufacturers recommendation for applying the paint. The existing walkway shall be grip strut safety grating or approved equal as specified herein. Prior to painting the existing drop inlet spillways, the weir boards shall be removed down to the mud line and the walkway boards shall be removed from the walkways. The drop inlet shall be painted prior to any disposal operation and repaired as necessary and maintained until completion and acceptance of all work under the contract. All timber used in the repair of the spillway shall conform to the requirements specified herein and as shown on the contract drawings. All construction shall be performed in accordance with the details shown on the drawings and specified herein. Materials, fabrications, and construction of the spillway shall meet the following requirements.

6-1.4.2. Concrete shall consist of commercially available material and shall conform to the requirements of ASTM C 94-78A, "Ready-Mixed Concretes". The mixture shall be designed to produce concrete having an average compressive strength of 2500 psi at 28 days.

6-1.4.3. Forms shall be steel or lumber having adequate strength to hold the concrete true to line and grade and to support equipment operated from the forms. All forms shall be clean and shall be coated with form oil prior to concrete placement.

6-1.4.4. Anchor bolts, studs, fasteners shall meet the requirements of ASTM A 307-78. All bolts and fasteners shall be furnished with nuts and washers conforming to ANSI B 18.22.1, Type B. All fasteners, studs, and anchor bolts shall be galvanized.

6-1.4.5. Welding shall meet the requirements of American Welding Society (AWS) standard D1.1-75 (Rev 2-77).

6-1.4.6. Structural steel shapes, pipes, and plates shall conform to the requirements of ASTM A 36-77. On (new spillways) (existing spillways) all structural steel members (vertical columns, horizontal braces, walkway supports, and hand rails) that are corroded and/or lack a protective coating (primer or topcoat) shall be sandblasted to bare metal and primed with one coat of Devoe Catha-Coat 302 zinc self-curing primer, coated with Devoe 201 Epoxy Buff Primer and painted with Devoe 221 Devtar 5A corrosion control coating or equivalent products as approved by the Contracting Officer. Surface preparation shall follow manufacturer's recommendations.

6-1.4.7. Treated timber used in construction and repair of the spillways shall be furnished and installed by the contractor. All timber to be furnished shall be straight, even sawed, sound, and entirely free from all defects which might impair its durability or its usefulness for the purpose intended. Timbers shall bear the official grade mark of the association under whose rules it is purchased, or, in lieu thereof, each shipment shall be accompanied by a certificate of inspection issued by the inspection association, subject in either case to the requirements of Federal Specification MM-L-751H for lumber softwood." Treated timber shall be accompanied by a certificate from a recognized treatment company certifying the amount of treatment. Preservative treatment shall be in accordance with AWP Standard C2-84, employing the full cell process using creosote-coal tar solution or chromated copper-arsenate mixture. Treated timbers shall be southern yellow pine rough no. 1, to the dimensions indicated on the drawings.

1. Creosote-Coal Tar Solution: There shall be a minimum solution retention of a minimum of 12 pounds per cubic foot of timber. All cuts in timber or abraded surfaces of new work shall be brush treated with two (2) coats of hot "Creosote, Technical, Wood Preservation, Brush Spray, or Open-Tank Treatment". Holes bored in timbers after treatment shall be treated with hot creosote. Hot sealing compound shall be applied to holes immediately before driving bolts home. Unused holes in timber shall be treated with creosote coal tar solution conforming to AWP standard P12-68 "Creosote-Coal Tar Solution".

2. Chromated Copper Arsenate Mixture: There shall be a minimum solution retention of 0.60 pounds per cubic foot of timber. All cuts in timber, abraded surfaces or holes bored in timbers will be treated with one application of a concentrated solution of the preservative.

6-1.4.8. Walkways and handrails shall be maintained as shown on the drawings. All handrails, walkway supports and gratings shall be galvanized. The grating material shall meet the requirements below:

<u>Material Type</u>	<u>Gauge</u>	<u>Max Span (ft)</u>	<u>Uniform Load (lb/ft)</u>	<u>Concentrated Load (lb)</u>	<u>Deflection (In)</u>
Grip Strut Safety Grating or approved equal-Galvanize	12	5	345	845	.22

6-1.4.9. Pipe Drains. The following publication of the issues listed below, but referred to thereafter by basic designation only, form a part of this specification to the extent indicated by references thereto:

Federal Specification.

WW-P-405B (1)

Pipe, corrugated (Iron or Steel, Zinc Coated)

WWAP-402C (1)

Pipe, corrugated (Aluminum Alloy)

6-1.4.10. Pipe drains shall be of the size and lengths indicated and shall conform to the requirements for the following pertinent types: Corrugated steel pipe shall conform to Federal Specifications WW-P-405B, Class I, Shape (1) Coating (P), Type (C) of 14 gage, or the contractor may elect to use aluminum alloy corrugated pipe and shall conform to Federal Specifications WWAP-402C, class II, Shape (1) of 12 gage. Certified copies of test reports demonstrating conformance to the applicable pipe specifications shall be delivered to the Contracting Officer before the pipe is installed.

6-1.4.11. The width of trenches at any point below the top of the pipe shall be not greater than the outside diameter of the pipe plus sufficient width to permit satisfactory jointing and thorough tamping of the bedding material under and around the pipe. Where wet or otherwise unstable soil incapable of properly supporting the pipe, as determined by the Contracting Officer, is encountered in the bottom of the trench, such material shall be removed to the depth required and replaced to the proper grade with selected material and compacted. The bedding surface for the pipe shall provide a firm foundation of uniform density throughout the entire length of the pipe. When necessary, the bedding shall be tamped. Bell holes and depressions for joints shall be only of such length, depth and width as required for properly making the particular type joint.

6-1.4.12. Each pipe shall be carefully examined before being laid, and defective or damaged pipe shall not be used. The pipe drains shall be laid to the grades and alignment indicated. Proper facilities shall be provided for lowering section of pipe into trenches. Under no circumstances shall pipe be laid in water, and no pipe shall be laid when trench conditions or weather are unsuitable for such work. Diversion of drainage or dewatering of trenches during construction shall be provided as necessary. All pipe in place shall have been installed before backfilling.

6-1.4.13. Corrugated Metal Pipe shall be laid with the separate sections joined firmly together, with the outside laps of circumferential joints pointing upstream and with longitudinal laps on the sides. Any unprotected metal in the joints shall be coated with Denflex polymex touch up or approved equal. The interior coating shall be protected against damage from insertion of removal of struts or tie wires. Lifting lugs, where used, shall be placed to facilitate moving the pipe without damage to the exterior or interior coatings. During installation, pipe shall be handled with care to preclude damage to the coating. Prior to placing the backfill, damaged areas of coupling banks and pipe shall be given a coating of Denflex polymex touch up or approved equal. Pipe on which the coating has been damaged to such extent that satisfactory field repairs cannot be made shall be removed and replaced without additional cost to the government.

6-1.4.14. The space between the pipe and connecting bands shall be kept free from dirt and grit so that the corrugation fits snugly. The connecting band, while being tightened, shall be tapped with a softhead mallet of wood, rubber, or plastic to take up slack and insure a tight joint. Unless otherwise specified, field joints shall be made with outside bands, each band consisting of one or two pieces. The type, size, and gage of band and the size of angles and bolts shall be as indicated, or where not indicated, shall be as specified in the applicable standards or specifications for the pipe.

6-1.4.15. After the bedding has been prepared and the pipe installed, selected material from excavation or borrow, at a moisture content that will facilitate compaction, exceeding six (6) inches in compacted depth shall be brought up evenly on both sides of the pipe for the full length of the pipe. Care shall be taken to insure thorough compaction of the fill under the haunches of the pipe. Each layer shall be thoroughly compacted with mechanical tampers or rammers. This method of filling and compacting shall continue until the fill has reached an elevation of at least twelve (12) inches above the top of the pipe. The remainder of the trench shall be backfilled and compacted by spreading and rolling, or compacted by mechanical rammers or tampers in layers not exceeding eight (8) inches to a density equal to or greater than the density of the surrounding undisturbed earth.

6-1.4.16. All costs in connection with spillway construction, repair and maintenance shall be included in the contract price for Bid Item No. "Levees, Spillways & Ditches".

6-1.5. Pipelines.

6-1.5.1. The dredge pipeline routes to the disposal areas shall follow closely the locations shown on the contract drawings. Detail right-of-way drawings showing the location of the pipeline routes with respect to property lines are available for inspection at the Brownsville Area Office, 3505 Boca Chica Blvd., Suite 341, Brownsville, Texas.

6-1.5.2. Every effort has been made to give all pertinent details on the locations of utility pipelines and other facilities which may be encountered in trenching or jacking operations. The data furnished on the contract drawings are substantially correct. However, the Contractor shall investigate existing conditions and satisfy himself as to the existence of any additional construction which may interfere with pipeline laying under these specifications.

6-1.5.3. If the Contractor elects to use a submerged section in the dredge discharge pipeline for crossing a navigable channel he may do so without the formality of obtaining a Department of the Army permit for work or structures in navigable waters. However, three (3) copies of detailed plans of the submerged section shall be submitted by the Contractor and shall be approved by the Contracting Officer prior to use of the submerged section. Such plans shall indicate clearly the width and depth of the navigation opening and the manner in which it is to be marked by day and by night for the safety of navigation. The minimum bottom width of the submerged section shall not be less than 200 feet wide for channels whose authorized width is greater than

200 feet. The minimum bottom width of the submerged section for channels whose authorized width is less than 200 feet shall be the width of the authorized Federal Channel. The highest point on the pipe or ball connection occurring across the bottom width of a submerged section shall not be higher than: 14 feet below Mean Low Tide in the GIWW Main Channel and the Port Mansfield Turnout Channels; and 18 feet below Mean Low Tide in the Channel to Port Mansfield. Lighted buoys, meeting the requirements of Coast Guard Regulations (33 C.F.R. 62.25), shall be provided by the Contractor to mark the navigation opening. A red buoy exhibiting a quick flashing red light shall be used to mark the right side of the opening and a black buoy exhibiting a quick flashing green light shall be used to mark the left side of the opening. The frequency of the flashes shall be not less than 60 per minute. "Right side" and "left side" of the opening shall be in conformance with the lateral system of buoyage established by the U.S. Coast Guard. Requirements for the lighted buoys and description of the lateral system of buoyage will be found in Coast Guard publication CG 208 entitled "Aids to Navigation". Lights to be displayed on pipelines shall be in accordance with Coast Guard Regulations. (33 CFR 80.23)

6-1.6. Unauthorized Disposal of Material.

6-1.6.1. Any excavated 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 excavated material and deposit it where directed at his expense.

6-1.6.2. During the progress of the work, the Contractor shall not deposit worn out discharge pipe, wire rope, scrap metal, timbers, or any other such type of rubbish or obstructive material in the disposal areas, except as specified herein, or along the banks of the navigable waters. Such material, together with any scrap, rope, wire cable, piles, pipe, or any other obstructive material which may be encountered during the dredging operations, shall become the property of the Contractor and shall be disposed of by the Contractor.

6-1.6.3. Easements. Permits authorizing the laying of shore pipe, and for disposal of dredged material in the disposal areas, are on file and available for examination in the office of the Corps of Engineers, Department of the Army, at 400 Barracuda, Essayons Building, Galveston, Texas.

6-1.7. Preservation of Public and Private Property.

6-1.7.1 All fences, roads, ditches, private or public grounds and other structures or improvements damaged as a result of the Contractor's operations under these specifications shall be repaired or rebuilt by the Contractor at his expense. The areas used by the Contractor in laying and maintaining his pipelines shall be restored to the same or as good a condition as existed prior to commencement of the work.

6-1.7.2 The Contractor shall preserve and protect all existing informational and directional signs, station markers, mile markers and mooring piles which have been established along either bank of the waterway within the reaches of

the dredging operations covered by these specifications. The Contractor will be liable for and will be required to replace or restore at his own expense all signs, markers and mooring piles damaged or destroyed as a result of dredging operations under these specifications.

6-1.8. Alternate Disposal Areas Proposed by Contractor with Bid

6-1.8.1. If disposal areas other than those provided under these plans and specifications are proposed, the Contractor shall furnish, with his bid, written permission of the owners for the use of the substitute disposal areas

and written permission of the owners of the properties involved in obtaining access to the substitute disposal areas. The Contractor shall coordinate the use of the substitute disposal areas with Federal, State and local fish and wildlife, conservation and pollution control agencies and he shall submit, with his bid, the written approval of these agencies for the use of the substitute disposal areas. Substitute disposal areas proposed for use under these specifications shall be coordinated with the following agencies.

Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, Texas 75270

U.S. Fish and Wildlife Service
Regional Director
P.O. Box 1306
Albuquerque, New Mexico 87103

National Marine Fisheries Service
Regional Director
Southeast Region
9450 Koger Blvd.
St. Petersburg, Florida 33702

Texas Department of Water Resources
P.O. Box 13087
Capitol Station
Austin, Texas 78711

Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
ATTN: Susan Reiff

Deputy Commissioner for Land Management
General Land Office
1700 North Congress Avenue
Austin, Texas 78701

General Land Office
Land Management Division
Dredging Coordinator
1700 North Congress Ave.
Austin, Texas 78701

Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711

6-1.8.2. The award of a contract will be subject to the acceptance of the proposed Contractor furnished disposal areas by the Contracting Officer and unless the foregoing required data are furnished with the bid at the time of bid opening, the bid for the use of the proposed substitute disposal areas will be considered non-responsive.

6-1.9. Alternate Disposal Areas Proposed by Contractor After Award of Contract. If, after award of the contract, a disposal area other than that stipulated in these specifications is proposed, its acceptance will be subject to the approval of the Contracting Officer. The Contractor shall obtain the written consent of the owners of the substituted grounds and furnish evidence thereof to the Contracting Officer before proceeding with the work. All expenses incurred in connection with providing and making available such disposal area shall be borne by the Contractor, and all materials deposited thereon, and all operations in connection therewith shall be at the Contractor's risk.

7-1. OVERDEPTH, SIDE AND END SLOPES.

7-1.1. Overdepth. To cover inaccuracies of the dredging process, material actually removed from within the specific areas to be dredged to depths as specified in Construction Technical Provision , Table of Allowable Overdepths, Side and End Slopes, will be estimated and paid for at contract price or prices.

7-1.2. Side and End Slopes. Material actually removed, within limits approved by the Contracting Officer, to provide for final side and end slopes as specified in Construction Technical Provision , Table of Allowable Overdepths, Side and End Slopes, but not in excess of the amounts originally above these limiting side and end slopes will be estimated and paid for, whether dredged in original position or by dredging space below the pay slope plane at the bottom of the slope for upslope material capable of falling into the cut. In computing the limiting amount of side and end slopes dredging, net dimensions, without allowance for overdepth, will be used.

7-1.3. Table of Allowable Overdepths, Side and End Slopes.

From Station	To Station	Allowable Overdepth (Feet Below Required Depth)	Final				Above Plane (Feet Below MLT)
			Side Slope		End Slope		
			Grade		Grade		
			Ver-tical	Hori-zontal	Ver-tical	Hori-zontal	
GULF INTRACOASTAL WATERWAY - MAIN CHANNEL							
192+000	--	----	--	--	1	3	14
192+000	220+000	2	1	3	--	--	14
220+000	---	2	1	3	--	--	14
220+000	228+000	2	1	3	--	--	16
228+000	---	2	--	--	1	3	16
PORT MANSFIELD ENTRANCE CHANNEL							
-2+200	0+000	2	1	6	1	6	18
CHANNEL TO PORT MANSFIELD							
38+000	---	---	--	--	1	3	18
38+000	41+256	2	1	3	--	--	18
41+256	42+100	2	1	0	--	--	18
42+100	44+000	2	1	3	--	--	18
44+000	45+036*	2	1	0	--	--	18
PORT MANSFIELD APPROACH CHANNEL							
2+980*	7+200	2	1	3	--	--	18
PORT MANSFIELD TURNING BASIN							
7+200	7+720	2	1	1.5	--	--	18
7+720	8+790	2	1	2	--	--	18
8+790	---	--	--	--	1	3	18
PORT MANSFIELD - GULF INTRACOASTAL WATERWAY TURNOUT CHANNEL							
SOUTHWEST TURNOUT CHANNEL							
0+000	---	--	--	--	1	3	14
0+000	1+967	2	1	3	--	--	14
1+967	2+980(1)	2	1	3	--	--	14
1+967	2+980(2)	2	1	0	--	--	14

SOUTHEAST TURNOUT CHANNEL

41+256	42+065(1)	2	1	3	--	--	14
41+256	42+065(2)	2	1	0	--	--	14
42+065	43+994	2	1	3	--	--	14
43+994	---	--	--	--	1	3	14

NORTHEAST TURNOUT CHANNEL

41+256	42+065(1)	2	1	0	--	--	14
41+256	42+065(2)	2	1	3	--	--	14
42+065	44+014	2	1	3	--	--	14
44+014	---	--	--	--	1	3	14

NORTHWEST TURNOUT CHANNEL

0+023	---	--	--	--	1	3	14
0+023	2+011	2	1	3	--	--	14
2+011	2+980(1)	2	1	0	--	--	14
2+011	2+980(2)	2	1	3	--	--	14

*CHANNEL TO PORT MANSFIELD STA 45+0362 PORT MANSFIELD = APPROACH CHANNEL STA 2+980

- (1) VIEWED UPSTREAM, LEFT SIDE SLOPE
- (2) VIEWED UPSTREAM, RIGHT SIDE SLOPE

8-1. MEASUREMENT AND PAYMENT.

8-1.1. Mobilization and Demobilization, Payment Item No. 1. Payment for this item will be made pursuant to the conditions of Construction Special Clause 6, MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. 1 (DEC 1985).

8-1.2. Dredging Payment Items Nos. 2 , 3 & 4. The total amount of material removed and to be paid for under Items Nos. 2,3 & 4, of the Bidding Schedule of the contract, will be measured by the cubic yard in place by computing the volume between the bottom surface shown by fathometer soundings of the last survey made before dredging and the bottom surface shown by the fathometer soundings of a survey made as soon as practicable after the work specified in each Section in Construction Technical Provision. 2-1., SECTIONS has been completed and included within the limits of the overdepth and side and end slopes described in Construction Technical Provision 7-1.3, Table of Allowable Overdepths, Side and End Slopes, less any deductions that may be required for misplaced material described in Construction Technical Provision 6-1, DISPOSAL OF EXCAVATED MATERIAL.

8-1.3. In using electronic positioning the Government will make a corrective adjustment, if applicable, in the volume computation process in order to compensate for the repeatability tolerance of the electronic positioning equipment, between "before-dredging" and "after-dredging" surveys. The amount of this adjustment will be limited to a shift of plus or minus 3 meters on a azimuth from the baseline normal to the center line of the cut, of the "after-dredging" survey with respect to the "before-dredging" survey. Any

adjustment made in "after-dredging" cross sections will also result in a similar adjustment to the "before-dredging" cross sections in the area not dredged. The horizontal control points shown on the contract drawings are the control points the Government will use to perform electronic surveys on the waterway. The Government does not guarantee permanent access to these control points, therefore, it may be necessary for the contractor to establish his own network of survey points from these survey points or from other U.S.C.G.S. monuments. Location and description of the additional horizontal control points which the Government plans to use to perform electronic surveys on the reaches to be dredged are available at the Brownsville Area Office. The contractor will be responsible for establishing his own reference line in order to conduct hydrographic surveys and dredging operations if he elects not to use electronic positioning equipment.

8-1.4. The maps and/or drawings already prepared (Construction Special Clause 2, CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS) are believed to represent conditions existing as of the date of their preparation. However in order to reflect anticipated shoaling occurring between the dates of preparation of such maps and/or drawings and the dates of the before dredging sections, the estimated dredging quantities shown in the Bidding Schedule have been adjusted accordingly. The depths and elevations shown thereon will be verified and corrected by fathometer soundings taken by the Government 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.

8-1.5. Monthly partial payments for "Dredging" will be based on approximate quantities determined by fathometer soundings or sweepings taken behind the dredge.

8-1.6. Monthly partial payments for "Levees, Spillways, and Ditches" up to ninety-five percent (95%) of the contract price based on estimates of work completed during the period; the remaining five percent (5%) will be included in the final estimate after completion and final acceptance of the work in the contract.

9-1. REPORTING REQUIREMENT. The Contractor will be required to prepare and maintain a daily and a monthly summary report of operations and furnish copies thereof to the Contracting Officer's Representative. A copy of the form prescribed for recording the required information is attached. Further instructions on the preparation of the report will be furnished at a preconstruction conference. (NOTE: Cost data items or items pertaining to performance characteristics of the dredge, such as pump pressures, pump speed and discharge velocities, indicated on the accompanying SWG Form 89, will not be required.)

**INSPECTION REPORT OF DREDGING
GALVESTON DISTRICT**

RCS SWGCCO-32

CONTRACTOR: _____
ADDRESS: _____

DATE: _____
CONTRACT NO: _____
REPORT NO: _____

_____ INCH PIPELINE DREDGE _____ POWER, TYPE _____ HP _____
Exact location of work: _____
Average depth (feet & tenths) before dredging: _____; after dredging: _____
Character of material & percentage of each: Gravel _____ Sand _____ Clay _____ Mud _____ Silt _____ Hardpan _____
Stone _____ Shell _____ Other _____ Character of Work: (New Work) and/or (Maintenance)
Number of shifts worked: _____ Number of persons in crew: _____
Weather: (Clear) (P. Cloudy) (Cloudy) Temperature: _____ Min, _____ Max; Rainfall _____ inches

DREDGING WORK PERFORMED					DISTRIBUTION OF TIME																																																																												
Item	Unit	Quantity				Effective working time chargeable to cost of work																																																																											
Average width of cut	Feet					Item	Hours Minutes																																																																										
Total advance this period	Feet					Pumping																																																																											
Total advance previous to this period	Feet					Percentage of total time																																																																											
Total advance to date	Feet					Non-effective working time chargeable to cost of work																																																																											
Length of discharge pipe	Feet					Item	Hours Minutes																																																																										
Average lift	Feet					Handling pipe lines																																																																											
Average pump speed	R.P.M.					Handling swinging lines																																																																											
Amount dredged per pumping hour, gross Cu. Yds.						Clearing pump and pipe line																																																																											
Cubic yards removed	Gross	Credited				Clearing cutter or suction head																																																																											
Amount dredged this date	C.Y.					Taking on fuel and supplies																																																																											
Amount previously reported	C.Y.					To and from wharf or anchorage																																																																											
Total amount dredged to date	C.Y.					Changing location of plant on job																																																																											
ATTENDANT PLANT <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Item</th> <th>Name or Number</th> <th>Hours</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>					Item	Name or Number	Hours																												Loss due to opposing natural elements																																														
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Loss due to passing vessels																																																																																	
Washing boilers																																																																																	
Minor operating repairs																																																																																	
Waiting for attendant plant																																																																																	
Preparation																																																																																	
Transferring plant between works																																																																																	
Lay time off shift																																																																																	
Fire and boat drills																																																																																	
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Item	Hours	Minutes																																																																															
Repair time chargeable to rental																																																																																	
Collisions																																																																																	
Out of commission																																																																																	
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\$ Of Total Time Gas Ejection In Use																																																																																	

NOTE: Inventory space must be filled in on the last day of each month and also on the report made upon completion of each job.

NUMBER OF CONTRACTOR INSPECTIONS: By field personnel _____; By office personnel _____

Work Performed Today: (Indicate location and description of work performed. Refer to work performed by prime and/or subcontractors by letters P or S in Table below.)

Contractor/Subcontractors and Area of Responsibility

- a.
- b.
- c.
- d.
- e.
- f.
- g.

Results of Inspection: (Include satisfactory work completed, or deficiencies with action to be taken.)

Tests Required by Plans and/or Specifications Performed and Results of Tests:

Verbal Instructions Received: (List any instructions given by Government personnel on construction deficiencies, retesting required, etc. with action to be taken.)

Remarks: (Cover any conflicts in plans, specifications, or instruction.)

Inspector

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 were in strict compliance with the contract plans and specifications except as noted above.

Contractor's Approved Authorized Representative