

**VOLUME 1 OF 2**

**UNRESTRICTED IFB 'C' CONTRACT**

CONTRACT NO: **W9127819C0029**  
SOLICITATION NO: **W9127819B0004**  
CADD NO: **CHC18001**

**MSCIP COMPREHENSIVE BARRIER ISLAND  
RESTORATION PLAN,  
SHIP ISLAND PHASES 3 AND 4**

**HARRISON COUNTY, MISSISSIPPI**

THIS IS A CIVIL WORKS PROGRAM PROCUREMENT AND IS NOT FUNDED BY THE  
DEPARTMENT OF DEFENSE

***“GOOD ENGINEERING RESULTS IN A BETTER ENVIRONMENT”***



**US Army Corps  
of Engineers**  
Mobile District

U.S. ARMY ENGINEER DISTRICT, MOBILE  
109 St. Joseph St  
Mobile, Alabama 36602



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<b>SOLICITATION, OFFER AND AWARD</b> (Construction, Alteration, or Repair)	1. SOLICITATION NO. <b>W9127819B0004</b>	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED <b>18 JULY 2019</b>	PAGES OF PAGES  1 OF 2

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

4. CONTRACT NO. <b>W9127819C0029</b>	5. REQUISITION/PURCHASE REQUEST NO. <b>W31XNJ92618206</b>	6. PROJECT NO. <b>CHC18001</b>
7. ISSUED BY CODE	CT	8. ADDRESS OFFER TO

U.S. ARMY ENGINEER DISTRICT, MOBILE  
CONTRACTING DIVISION (CESAM-CT)  
(109 ST. JOSEPH ST. 36602) P.O. BOX 2288  
MOBILE, AL 36628-0001

SAME AS BLOCK 7  
IF HAND CARRIED, CONTACT CT SPECIALIST  
IDENTIFIED IN BLOCK 9

9. FOR INFORMATION CALL : SSG Kenneth Harlan Sara Logsdon	A. NAME kenneth.p.harlan@usace.army.mil sara.g.logsdon@usace.army.mil	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)
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#### SOLICITATION

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

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

**MSCIP COMPREHENSIVE BARRIER ISLAND RESTORATION PLAN – SHIP ISLAND PHASES 3 AND 4,  
HARRISON COUNTY, MS**

11. The Contractor shall begin performance within 30 calendar days and complete it within 365 calendar days after receiving  
☐ award, ☒ notice to proceed. This performance period is ☒ mandatory, ☐ negotiable. (See \_\_\_\_\_.)

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

A. Sealed offers in original and 1 copy to perform the work required are due at the place specified in Item 8 by 2:00pm (hour) local time **20 AUG 2019** (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. **SEALED ENVELOPES CONTAINING OFFERS SHALL BE MARKED TO SHOW THE OFFEROR'S NAME AND ADDRESS, THE SOLICITATION NUMBER, AND THE DATE AND TIME OFFERS ARE DUE.**

B. An offer guarantee ☒ is, ☐ is not required.

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

D. Offers providing less than 120 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)  GREAT LAKES DREDGE & DOCK COMPANY, LLC 2122 YORK ROAD OAK BROOK, ILLINOIS 60523 TIN: 20-1354414 D&B: 00-693-0358 CAGE CODE: 1BSU5	15. TELEPHONE NO. (Include area code) 630/574-3000
CODE 1BSU5 FACILITY CODE	16. REMITTANCE ADDRESS (Include only if different than Item 14)

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)

**AMOUNTS**

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

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

AMENDMENT NO.									
	0001	0002							
DATE	7/19/19	7/24/19							

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER  
(Type or print)

STEVEN R. AUERNHAMER, VICE PRESIDENT

20B. SIGNATURE



20C. OFFER DATE

AUGUST 20, 2019

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

SEE BID SCHEDULE

22. AMOUNT \$56,651,055.85	23. ACCOUNTING AND APPROPRIATION DATA 096 NA X 2014 3125 000 0000 CCS: 33EK5 2014 08244632137996015 2520 5KGL75NA5JL0D1
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24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input checked="" type="checkbox"/> 10 U.S.C. 2304(c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( )
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26. ADMINISTERED BY CODE	27. PAYMENT WILL BE MADE BY USACE FINANCE CTR - DISBURSING OFFICER 5722 INTEGRITY DRIVE MILLINGTON TN 38054-5005
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CODE: 964145

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT (contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.	<input checked="" type="checkbox"/> 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 summarizes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
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30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31A. NAME OF CONTRACTING OFFICER (Type or print) Kathleen A. Achord
30B. SIGNATURE	30C. DATE
	31B. UNITED STATES OF AMERICA BY <i>Kathleen A. Achord</i>
	31C. AWARD DATE 9/20/2019

BIDDER'S NAME: GREAT LAKES DREDGE & DOCK COMPANY, LLC

BIDDING SCHEDULE

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
1.	Mobilization and Demobilization	1	Job	XXX	<u>\$10,925,000.00</u>
2.	Phase 3 Beach Fill	2,250,381	CY	<u>\$16.25</u>	<u>\$36,568,691.25</u>
3.	Phase 4 Beach Fill	1,217,734	CY	<u>\$ 6.90</u>	<u>\$8,402,364.60</u>
4.	Sea Turtle/Gulf Sturgeon Trawling (Hopper Dredges Only)	200	DAYS	<u>\$3,775.00</u>	<u>\$ 755,000.00</u>
Total Bid					<u>\$56,651,055.85</u>

OFFEROR ELECTS TO WAIVE THE PRICE EVALUATION PREFERENCE  
FOR HUBZONE SMALL BUSINESS CONCERNS: ( ) NO ( ) YES

(SEE BIDDING SCHEDULE NOTE NOS. 6 AND 7)

EXPLANATION OF BID ITEMS

GENERAL: This section comprises an explanation of the bid items identified in the bid schedule for each item of work. The bid schedule and the contract drawings shall be worked together to identify the various items of work to which each bid item will apply. The Contractor shall bid the work under the applicable bid item for the specific areas identified in the bid schedule. All work specified herein shall be accomplished in accordance with the requirements of the technical provisions of the specifications and the contract drawings. Payment described for the various bid items will be full compensation for all labor, materials, and equipment required to complete the work. Compensation for any item of work described in the contract but not listed in the bid schedule shall be included in the payment for the item of work to which it is made subsidiary.

Bid Item No. 1 - Mobilization/Demobilization:

(a) All costs associated with initial mobilization to the work site at Camille Cut/East Ship Island in Harrison County, Mississippi and final demobilization of all dredge plant, dredge attendant plant, and support equipment will be included in the contract lump sum price for Mobilization and Demobilization, Bid Item No. 1. This shall include any and all costs to (1) construct the necessary features to access and prepare the work site and (2) adapt, modify, reconstruct, and/or reconfigure the dredge plant and/or other equipment to a configuration capable of performing this contract work. No other separate payment shall be made for any such configuration preparations, and payment of this bid item is considered complete compensation for such actions. Sixty percent (60%) of the lump sum price will be paid after completion of the Contractor's mobilization at the work sites. The remaining forty percent (40%) will be paid after completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraph (a) above do not bear a reasonable relation to the cost of the work in this contract. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of -

- (i) Actual mobilization costs at completion of mobilization;
- (ii) Actual demobilization costs at completion of demobilization; and
- (iii) The remainder of this item in the final payment under this contract.

The Contracting Officer's determination of the actual costs in paragraph (b) of this clause is not subject to appeal.

A Mississippi State tax of 3.5% shall also be included as part of this bid item.

Bid Item No. 2 - Phase 3 Beach Fill:

Payment for Bid Item No. 2 will include all costs associated with placement of approximately 2,250,381 cubic yards of beach fill, except for those costs explicitly designated to be included in other bid items. Payment will be made for the volume of beach fill in-place between Stations 0+00 and 56+00. For

the purpose of acceptance and payment, the work shall be divided into reaches of 200 linear feet, or less at partial reaches. The quantity of beach fill for payment shall be calculated as the difference between the before- and after-construction surveys of the area within the acceptance prism. The acceptance prism shall be defined as the lines and grades shown on the drawings plus a tolerance of plus or minus 0.5 feet as described in section 35 20 25 - BEACH FILL, paragraph TOLERANCES. All material placed within the tolerance range will be paid for at the unit price for this bid item. However, the contract clause VARIATIONS ON ESTIMATED QUANTITIES will only be applicable to the quantity required to construct the beach fill to the lines and grades shown, without tolerances, on the contract drawings. Payment will not be made for any volume placed that exceeds the acceptance prism. Subsidiary features of work including surveying, shorebird monitoring, sea turtle monitoring, and turbidity monitoring shall also be included in this bid item. Details of the surveying requirements are provided in Section 01 00 00 - ADDITIONAL SPECIAL CONTRACT REQUIREMENTS, paragraph SURVEY REQUIREMENTS. Details of the shorebird, sea turtle, and turbidity monitoring are provided in section 1 57 19 - TEMPORARY ENVIRONMENTAL CONTROLS, paragraph PROTECTION OF FISH AND WILDLIFE.

A Mississippi State tax of 3.5% shall also be included as part of this bid item.

Bid Item No. 3 - Phase 4 Beach Fill:

Payment for Bid Item No. 3 will include all costs associated with placement of approximately 1,271,734 cubic yards of beach fill, except for those costs explicitly designated to be included in other bid items. Payment will be made for the volume of beach fill in-place between Stations 125+00 and 285+00. For the purpose of acceptance and payment, the work shall be divided into reaches of 200 linear feet, or less at partial reaches. The quantity of beach fill for payment shall be calculated as the difference between the before- and after-construction surveys of the area within the acceptance prism. The acceptance prism shall be defined as the lines and grades shown on the drawings plus a tolerance of plus or minus 0.5 feet as described in section 35 20 25 - BEACH FILL, paragraph TOLERANCES. All material placed within the tolerance range will be paid for at the unit price for this bid item. However, the contract clause VARIATIONS ON ESTIMATED QUANTITIES will only be applicable to the quantity required to construct the beach fill to the lines and grades shown, without tolerances, on the contract drawings. Payment will not be made for any volume placed that exceeds the acceptance prism. Subsidiary features of work including surveying, shorebird monitoring, sea turtle monitoring, and turbidity monitoring shall also be included in this bid item. Details of the surveying requirements are provided in Section 01 00 00 - ADDITIONAL SPECIAL CONTRACT REQUIREMENTS, paragraph SURVEY REQUIREMENTS. Details of the shorebird, sea turtle, and turbidity monitoring are provided in section 1 57 19 - TEMPORARY ENVIRONMENTAL CONTROLS, paragraph PROTECTION OF FISH AND WILDLIFE.

A Mississippi State tax of 3.5% shall also be included as part of this bid item.

Bid Item No. 4 - Sea Turtle/Gulf Sturgeon Trawling (Hopper Dredges Only):

Payment for Bid Item No. 4 will include the total daily cost for providing a trawler, NMFS-approved protected species observers, and all other items necessary to comply with the requirements described in Section 01 57 19 - TEMPORARY ENVIRONMENTAL CONTROLS, paragraph PROTECTION OF FISH AND WILDLIFE, the environmental permits, and the Biological Opinion. Mobilization and demobilization costs of the trawler will also be included in this bid item. Each mobilization event and each demobilization event will be paid at the unit price equal to one day of trawling. The contract clause VARIATIONS ON ESTIMATED QUANTITIES is not applicable to this bid item.

A Mississippi State tax of 3.5% shall also be included as part of this bid item.

-End of Section-



PLANT AND EQUIPMENT SCHEDULE

PLANT TO BE USED

No.	Type	Capacity	Manufacture	Age and Condition	Location
283416	DREDGE ALASKA HYDRAULIC DREDGE 1500HP LADDER PUMP 7,200HP MAIN PUMP DIESEL POWER 8,700HP TOTAL PUMP POWER 30"	600,000 CY/MO	TODD SHIPYARDS, CORP.	1960 EXCELLENT	AMELIA, LA
1256673	DREDGE ELLIS ISLAND HOPPER DREDGE 34" 5,000HP X 2 DIESEL	800,000CY/MO	EASTERN SHIPBUILDING GROUP	2016 EXCELLENT	PORT ARANSAS, TX

NOTE: In preparing the above tabulation the bidder shall insert the following information under the appropriate heading, using a separate line for each major item and an additional page if necessary.

(a) Number. For dredges give identifying number and name.

(b) Type. Under this heading give description as follows:

For bucket and dipper dredges show bucket capacity in cubic yards, horsepower of hoist engine, type of power, and number of swings per hour; for pipe-line dredges show inside diameter of discharge pipe, horsepower of pump engine, and type of power.

(c) Capacity. Under this heading, state the estimated capacity of the plant in cubic yards per month when working materials similar to those which it is anticipated will be encountered in the performance of the work.

The following statement will be executed by all bidders: The Plant\* (will, will not) have the facilities for furnishing the meals required by the "ACCOMMODATIONS AND MEALS FOR INSPECTORS" clause of the specifications.

\*Delete inapplicable provisions.

\*

ENG Form 1619R

\*

## **Section 00 45 00**

### **Representations and Certifications**

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## 52.203-2 - Certificate of Independent Price Determination

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to --

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods 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) of this provision; or

(2)

(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision STEVEN R. AUERNHAMER, VICE PRESIDENT *[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];*

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not

participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and

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

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

(End of Provision)

## **52.203-18 – Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation**

(a) *Definition.* As used in this provision--

“Internal confidentiality agreement or statement”, “subcontract”, and “subcontractor”, are defined in the clause at [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

(b) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds appropriated (or otherwise made available) for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(c) The prohibition in paragraph (b) of this provision does not contravene requirements applicable to Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement

representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(End of Provision)

## **52.204-5 - Women-Owned Business (Other Than Small Business)**

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

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

(End of Provision)

## **52.204-8 - Annual Representations and Certifications**

(a)

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

(2) The small business size standard is \$27,500,000.00.

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

(b)

(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

☒ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(vii) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(viii) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(ix) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(x) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xi) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(xii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xiii) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xiv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xvi) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative

**Procurement of Biobased Products Under Service and Construction Contracts.**

(xvii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xviii) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the clause at 52.204-7.

(xix) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xx) 52.225-4, Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225- 3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$80,317, the provision with its Alternate II applies.

(D) If the acquisition value is \$80,317 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxi) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.

(xxiii) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification. This provision applies to all solicitations.

(xxiv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.



(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

\_\_\_ (i) 52.204-17, Ownership or Control of Offeror.

\_\_\_ (ii) 52.204-20, Predecessor of Offeror.

\_\_\_ (iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

\_\_\_ (iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Certification.

\_\_\_ (v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

\_\_\_ (vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

\_\_\_ (vii) 52.227-6, Royalty Information.

\_\_\_ (A) Basic.

\_\_\_ (B) Alternate I.

\_\_\_ (viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of Provision)

## 52.204-16 - Commercial and Government Entity Code Reporting

(a) Definition. As used in this provision—

“Commercial and Government Entity (CAGE) code means--

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via –

(1) Registration in the system for Award management (SAM) at [www.sam.gov](http://www.sam.gov). If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) The DLA Commercial and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://cage.dla.mil>.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <https://www.cage.dla.mil>.

(e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.

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

(End of Provision)

## **52.204-17 Ownership or Control of Offeror**

(a) *Definitions.* As used in this provision—

“Commercial and Government Entity (CAGE) code” means--

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

(b) The Offeror represents that it ☒ has or ☐ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (c) and if applicable, paragraph (d) of this provision for each participant in the joint venture.

(c) If the Offeror indicates “has” in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code: 26052

Immediate owner legal name: GREAT LAKES DREDGE & DOCK CORPORATION  
(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity?:

☐ Yes or ☒ No.

(d) If the Offeror indicates “yes” in paragraph (c) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest level owner CAGE  
code: NOT APPLICABLE

Highest level owner legal  
name: \_\_\_\_\_ (Do not use a “doing  
business as” name)

(End of Provision)

## 52.204-20 – Predecessor of Offeror

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

“Commercial and Government Entity (CAGE) code” means--

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.

“Successor” means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

(b) The Offeror represents that it ☐ is or ☒ is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(c) If the Offeror has indicated “is” in paragraph (b) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: \_\_\_\_\_ (or mark “Unknown”).

Predecessor legal name: \_\_\_\_\_ NOT APPLICABLE  
(Do not use a “doing business as” name).

(End of Provision)

## **52.209-2 - Prohibition on Contracting with Inverted Domestic Corporations—Representation**

(a) *Definitions.* “Inverted domestic corporation” and “subsidiary” have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209-10).

(b) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(c) *Representation.* The offeror represents that—

(1) It ☐ is, ☒ is not an inverted domestic corporation; and

(2) It ☐ is, ☒ is not a subsidiary of an inverted domestic corporation.

(End of Provision)

## 52.209-5 - Certification Regarding Responsibility Matters

(a)

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

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

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

(B) Have ☐ have not ☒, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation); and

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

(D) Have ☐, have not ☒, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

*(i) The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

*(ii) The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay



the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

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

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

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

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

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

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

(End of Provision)

## **52.209-7 - Information Regarding Responsibility Matters**

(a) *Definitions.* As used in this provision—

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.



"Federal contracts and grants with total value greater than \$10,000,000" means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror ☒ has ☐ does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more;  
or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management which can be accessed via <https://www.sam.gov> (see 52.204-7).

(End of Provision)

### **52.209-11 – Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law**

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that--

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is ☐ is not ☒ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is ☐ is not ☒ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of Provision)

## **52.209-13 Violation of Arms Control Treaties or Agreements-Certification**

(a) This provision does not apply to acquisitions below the simplified acquisition threshold or to acquisitions of commercial items as defined at FAR 2.101.

(b) *Certification. [Offeror shall check either (1) or (2).]*

  X   (1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at <https://www.state.gov/t/avc/rls/rpt/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at <https://www.state.gov/t/avc/rls/rpt/>; or

       (2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control,

nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

(i) An inability to certify compliance.

(ii) An inability to conclude compliance.

(iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to [NDAA1290Cert@state.gov](mailto:NDAA1290Cert@state.gov). To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has—

(i) Waived application under U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(e) *Remedies.* The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other

remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

(End of Provision)

## **52.219-1 - Small Business Program Representations *Alternate I***

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

“Service-disabled veteran-owned small business concern”--

(1) Means a small business concern--

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

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

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

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

“Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

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

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

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

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

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

“Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127),” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)

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

(2) The small business size standard is \$27,500,000.00.

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



(c) *Representations.*

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

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

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

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.]* The offeror represents as part of its offer that—

(i) It ☐ is, ☐ is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.]* The offeror represents as part of its offer that--

(i) It ☐ is, ☐ is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint

venture. *[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

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

(7) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.]* The offeror represents as part of its offer that is ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

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

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

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(9) *[Complete if offeror represented itself as disadvantaged in paragraph (c)(2) of this provision.]* The offeror shall check the category in which its ownership falls:

☐ Black American.

☐ Hispanic American.

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



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

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

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

(d) *Notice.*

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

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

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

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

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

(End of Provision)

## **52.222-56 – Certification Regarding Trafficking in Persons Compliance Plan**

(a) The term “commercially available off-the-shelf (COTS) item,” is defined in the clause of this solicitation entitled “Combating Trafficking in Persons” (FAR clause 52.222-50).

(b) The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that—

(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$500,000.

(c) The certification shall state that—

(1) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons; and

(2) After having conducted due diligence, either—

(i) To the best of the Offeror's knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or

(ii) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

(End of Provision)

## **52.223-22 - Public Disclosure of Greenhouse Gas Emissions and Reduction Goals – Representation**

(a) This representation shall be completed if the Offeror received \$7.5 million or more in Federal contract awards in the prior Federal fiscal year. The representation is optional if

the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(b) Representation. [*Offeror is to check applicable blocks in paragraphs (b)(1) and (2).*]

(1) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [X] does not publicly disclose greenhouse gas emissions, i.e., make available on a publicly accessible Web site the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(2) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [X ] does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly available Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(3) A publicly accessible Web site includes the Offeror's own Web site or a recognized, third-party greenhouse gas emissions reporting program.

(c) If the Offeror checked "does" in paragraphs (b)(1) or (b)(2) of this provision, respectively, the Offeror shall provide the publicly accessible Web site(s) where greenhouse gas emissions and/or reduction goals are reported:\_\_\_\_\_.

(End of Provision)

## **52.225-25 - Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications**

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

Person--

(1) Means--

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

**Sensitive technology—**

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror--

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List

at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> ).

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of Provision)

## **252.203-7005 - Representation Relating to Compensation of Former DoD Officials**

(a) *Definition.* “Covered DoD official” is defined in the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104-2.

(End of Provision)

## **252.204-7007 - Alternate A, Annual Representations and Certifications**

Substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204-8:

(d)(1) The following representations or certifications in the System for Award Management (SAM) database are applicable to this solicitation as indicated:

(i) [252.209-7003](#), Reserve Officer Training Corps and Military Recruiting on Campus—Representation. Applies to all solicitations with institutions of higher education.

(ii) [252.216-7008](#), Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iii) [252.225-7042](#), Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(iv) [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations. Applies to solicitations for the acquisition of commercial satellite services.

(v) [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(vi) [252.229-7012](#), Tax Exemptions (Italy)—Representation. Applies to solicitations and contracts when contract performance will be in Italy.

(vii) [252.229-7013](#), Tax Exemptions (Spain)—Representation. Applies to solicitations and contracts when contract performance will be in Spain.

(viii) [252.247-7022](#), Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: *[Contracting Officer check as appropriate.]*

\_\_\_\_ (i) [252.209-7002](#), Disclosure of Ownership or Control by a Foreign Government.

\_\_\_ (ii) 252.225-7000, Buy American—Balance of Payments Program Certificate.

\_\_\_ (iii) 252.225-7020, Trade Agreements Certificate.

\_\_\_ Use with Alternate I.

\_\_\_ (iv) 252.225-7031, Secondary Arab Boycott of Israel.

\_\_\_ (v) 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

\_\_\_ Use with Alternate I.

\_\_\_ Use with Alternate II.

\_\_\_ Use with Alternate III.

\_\_\_ Use with Alternate IV.

\_\_\_ Use with Alternate V.

(e) The offeror has completed the annual representations and certifications electronically via the SAM website at <https://www.acquisition.gov/>. After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204-8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by provision number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Provision #	Title	Date	Change

**Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.**

**(End of Provision)**



## **Section 00 70 00**

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## **52.202-1 DEFINITIONS (NOV 2013)**

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless--

The solicitation, or amended solicitation, provides a different definition;

The contracting parties agree to a different definition;

The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(End of Clause)

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

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--

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

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

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

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

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

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

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



this contract.

(End of Clause)

## **52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)**

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, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

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

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

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

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

(End of Clause)

## **52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)**

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

or furnished by the subcontractor under this contract or under any follow-on production contract.

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

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

## **52.203-7 ANTI-KICKBACK PROCEDURES. (MAY 2014)**

(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 to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

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

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

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

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

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

“Subcontractor,” as used in this clause,

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime

Contractor or a higher tier subcontractor.

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

(b) The 41 U.S.C. chapter 87, Kickbacks, prohibits any person from --

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

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

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

(c)

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

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

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

(4) The Contracting Officer may

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

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

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

(End of Clause)

## **52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may--

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

Rescind the contract with respect to which—

The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either--

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

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

The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

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

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

(End of Clause)

## **52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

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

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

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

For cost-plus-award-fee contracts--

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

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

For fixed-price-incentive contracts, the Government may--

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

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

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

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

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

(End of Clause)

## **52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)**

Definitions. As used in this clause--

Agency means executive agency as defined in Federal Acquisition Regulation (FAR)

2.101. Covered Federal action means any of the following actions:

Awarding any Federal contract.

Making any Federal grant.

Making any Federal loan.

Entering into any cooperative agreement.

Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

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

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

Officer or employee of an agency includes the following individuals who are employed by an agency:

An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

A special Government employee, as defined in section 202, Title 18, United States

Code.

An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31



U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

The term appropriated funds does not include profit or fee from a covered Federal action.

To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

Agency and legislative liaison by Contractor employees.

Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern--

The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

The application or adaptation of the person's products or services for an agency's use.

Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

Professional and technical services. (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or

an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

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

As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

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

Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

Disclosure. (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

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

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

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

Subcontracts. (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$150,000.

(End of Clause)

## **52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)**

(a) *Definition.* As used in this clause--

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

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

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)

(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) *Business ethics awareness and compliance program and internal control system.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating

information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the

internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.



(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of Clause)

### **52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)**

This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of Clause)

### **52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)**

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

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

“Subcontract” means any contract as defined in subpart [2.1](#) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

(End of Clause)

## **52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)**

(a) Definitions. As used in this clause—

Postconsumer fiber means—

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

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

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

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

(End of Clause)

## **52.204-7 System for Award Management (Oct 2018)**

(a) Definitions. As used in this provision—

*“Electronic Funds Transfer (EFT) indicator”* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*“Registered in the System for Award Management (SAM)”* means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM;

(2) The offeror has completed the Core, Assertions, and Representations and Certification, and Points of contact sections of the registration in the SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process.

(4) The Government has marked the record “Active”.

*“Unique entity identifier”* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

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

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

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

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

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

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

(End of Provision)

## **52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018)**

(a) Definitions. As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect cost.

“Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause required the disclosure of classified information.

(d)

(1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) First-tier subcontract information. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first tier subcontract. (The Contractor shall follow the instruction at <http://www.fsrs.gov> to report the data.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

- (ii) Name of the subcontractor.
  - (iii) Amount of the subcontract award.
  - (iv) Date of the subcontract award.
  - (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
  - (vi) Subcontract number (the subcontract number assigned by the Contractor).
  - (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
  - (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
  - (ix) The prime contract number, and order number if applicable.
  - (x) Awarding agency name and code.
  - (xi) Funding agency name and code.
  - (xii) Government contracting office code.
  - (xiii) Treasury account symbol (TAS) as reported in FPDS.
  - (xiv) The applicable North American Industry Classification System code (NAICS).
- (3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <https://www.fsrs.gov>, if—
- (i) In the subcontractor's preceding fiscal year, the subcontractor received—
    - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and



subcontracts), loans, grants (and subgrants), cooperative agreements and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$30,000 to avoid the reporting requirements in paragraph (d) of this clause.

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)

(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

(End of Clause)

## **52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

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

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

- (1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record “Active”.

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the

Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a Contractor has legally changed its business name or "doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to--

(A) Change the name in the SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

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

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

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an

appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

(End of Clause)

## **52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)**

(a) *Definition.*

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1-September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor’s failure to comply with the reporting requirements a part of the Contractor’s performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report or document its rationale for the agency.

(f)

(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and unique entity identifier); and

- (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.
- (2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.
- (End of Clause)

## **52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016)**

- (a) *Definition.* As used in this clause—  
“Commercial and government Entity (CAGE) code” means—
  - (1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or Government entity, or
  - (2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as the NATO CAGE (NCAGE) code.
- (b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.
- (c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.
- (d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx>.
- (e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.
- (End of Clause)

## **52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC2014)**

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

## **52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)**

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

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that

authorized users are permitted to execute.

- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the

acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of Clause)

## **52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)**

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

Covered article means any hardware, software, or service that--

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.



(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of Clause)

## **52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)**

Definition. Commercially available off-the-shelf (COTS) item, as used in this clause--

Means any item of supply (including construction material) that is--

A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

Sold in substantial quantities in the commercial marketplace; and

Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

The Contractor shall require each proposed subcontractor whose subcontract will exceed \$35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

The name of the subcontractor.

The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

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

Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that--

Exceeds \$35,000 in value; and

Is not a subcontract for commercially available off-the-shelf items.

(End of Clause)

## **52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for--

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of Clause)

## **52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)**

Definitions. As used in this clause--

Inverted domestic corporation means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

Subsidiary means an entity in which more than 50 percent of the entity is owned--

Directly by a parent corporation; or

Through another subsidiary of a parent corporation.

If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

Exceptions to this prohibition are located at 9.108-2.

In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

(End of Clause)

## **52.210-1 MARKET RESEARCH (APR 2011)**

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

“Commercial item and nondevelopmental item” have the meaning contained in Federal acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to--

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency’s needs are not available, nondevelopmental items are available that—

(i) Meet the agency’s requirements;

(ii) Could be modified to meet the agency’s requirements; or

(iii) Could meet the agency’s requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

(End of Clause)

## **52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)**

The Contractor shall be required to

(a) commence work under this contract immediately after the date the Contractor receives the notice to proceed,

(b) prosecute the work diligently, and

(c) complete the entire work ready for use as specified in this solicitation. The time stated for completion shall include final cleanup of the premises.

(End of Clause)

## **52.211-12 LIQUIDATED DAMAGES - CONSTRUCTION (SEP 2000)**

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of **\$5,604.00** for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of Clause)

## **52.211-13 TIME EXTENSIONS (SEP 2000)**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of Clause)

## **52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

(End of Clause)

## **52.214-26 AUDIT AND RECORDS--SEALED BIDDING (OCT 2010)**

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of

whether such items are in written form, in the form of computer data, or in any other form.

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

(1) The proposal for the modification;

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

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, 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.

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

(End of Clause)

## **52.214-27 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (AUG 2011)**

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

(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 certified 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 certified 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) of this clause

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

(1) the actual subcontract or

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

(d)

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

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



submitted.

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

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

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

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if --

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

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

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

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

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

(End of Clause)

## **52.214-28 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING (OCT 2010)**

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

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

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies.

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

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

(End of Clause)

## **52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS. (WITH DEVIATION 2019- 00003)**

(a) Definition. See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

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

(ii) Otherwise successful offers from small business concerns.

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

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

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

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

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

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

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

(3) General construction.

(i) At least 15 percent of the cost of contract performance to be incurred for personnel

will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors.

(i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)

(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBzone offeror shall provide the Contracting Officer a copy of the

notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

Class Deviation 2019-O0003 (dtd 12/3/18)—Limitations on Subcontracting for Small Business. Effective immediately this deviation remains in effect until it is incorporated into the FAR and DFARS, or otherwise rescinded.

Insert the following clause in solicitations and contracts for acquisitions conducted using full and open competition:

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2019) (DEVIATION 2019-O0003)

(a) Definitions. As used in this clause—

“HUBZone small business concern” means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that has the same small business program status as that which qualified the prime contractor for the award; as is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

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

(ii) Otherwise successful offers from small business concerns.

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

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation

preference, award will be made to the HUBZone small business concern.

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

☐ Offeror elects to waive the evaluation preference.

(d) Independent contractors. An independent contractor shall be considered a subcontractor.

(e) Agreement. By submission of an offer and execution of a contract, a HUBZone small business concern agrees that, in the case of a contract for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the 50 percent subcontract amount that cannot be exceeded;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the 50 percent subcontract amount that cannot be exceeded;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the 75 percent subcontract amount that cannot be exceeded.

(f) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable requirements specified in paragraph (d) of this clause.

(g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that

could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of Clause)

## **52.219-8 Utilization of Small Business Concerns (Oct 2018)**

(a) *Definitions.* As used in this contract--

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

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

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

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

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

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

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern—

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

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

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

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

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

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

(c) 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.



(d)

(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) ;  
or <http://www.sba.gov/hubzone> ;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3<sup>rd</sup> Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov) .

(End of Clause)

## **52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (Aug 2018) *Alternate 1 (Nov 2016)***

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

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

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

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

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

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

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

“Reduced payment” means a payment that is for less than the amount agreed upon in a

subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

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

“Total contract dollars” means the final anticipated dollar value, including the dollar value of all options.

“Untimely payment” means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be 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.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

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

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. 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. In accordance with 43 U.S.C. 1626--

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

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

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

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

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

(i) Small business concerns,

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns, and

(vi) Women-owned small business concerns.

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

(5) A description of the method used to identify potential sources for solicitation

purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

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

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

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

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

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will --

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

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

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the email address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

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

Class Deviation 2018-O0018—Micro-Purchase Threshold, Simplified Acquisition Threshold, and Special Emergency Procurement Authority. Effective August 31, 2018. This deviation remains in effect until it is incorporated into the FAR or DFARS, or otherwise rescinded.

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

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

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

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating –

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, indicating—

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

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

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

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

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

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

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

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

(A) Trade associations;

(B) Business development organizations;



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

(D) Veterans service organizations.

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

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

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

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

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if--

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify

the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

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

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

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

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

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

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

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best

describes the principal purpose of the subcontract.

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

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(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) A contract may have no more than one subcontracting plan. When a modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

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

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the

Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)

Alternate I (Nov 2016). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)

(1) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be 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.

Alternate II (Nov 2016). As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)

(1) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and

negotiate a subcontracting plan shall make the Offeror ineligible for award of a contract.

Alternate III (Jan 2017). As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause:

(d)

(10) Assurances that the Offeror will—

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

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

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with the paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294; in accordance with the paragraph (l) of this clause. Ensure that subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (1) of this clause, using eSRS.

(l) The Contractor shall submit a SF 294. The contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) SF 294. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan. For Contractors the report shall be submitted to the Contracting Officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When a Contracting Officer rejects a report, the Contractor shall submit a revised report within 30 days of receiving the notice of report rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the report on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(2) SSR.

(i) Reports submitted under individual contract plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency



covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30, for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor is required to submit a revised SSR within 30 days of receiving the notice of report rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within 30 days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

Alternate IV (Aug 2018). As prescribed in 19.708(b)(1)(iv), substitute the following paragraphs (c) and (d) for paragraphs (c) and (d) in the basic clause: ( DEVIATIONS 2018-O0018, and 2019-O0005)

(c)

(1) The Contractor, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Contractor is submitting an individual subcontracting plan, the plan shall separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone

small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be incorporated into the contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. The subcontracting plan does not apply retroactively.

(2)

(i) The prime Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

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

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor 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. In accordance with 43 U.S.C. 1626--

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of--

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

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

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iv) Service-disabled veteran-owned small business concerns;

(v) HUBZone small business concerns;

(vi) Small disadvantaged business concerns; and

(vii) Women-owned small business concerns.

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

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

(6) A statement as to whether or not the Contractor 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 (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

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

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

(9) Assurances that the Contractor will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Contractor will--

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

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

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for an indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

- (v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
  - (vi) Provide its prime contract number, its unique entity identifier, and the email address of the Contractor's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
  - (vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- Class Deviation 2018-O0018—Micro-Purchase Threshold, Simplified Acquisition Threshold, and Special Emergency Procurement Authority. Effective August 31, 2018. This deviation remains in effect until it is incorporated into the FAR or DFARS, or otherwise rescinded
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, indicating—

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

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

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

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

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

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

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

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

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

(12) Assurances that the Contractor will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the proposal for the modification, in the same or greater scope, amount, and quality used in preparing and

submitting the modification proposal. Responding to a request for a quote does not constitute use in preparing a proposal. The Contractor used a small business concern in preparing the proposal for a modification if--

(i) The Contractor identifies the small business concern as a subcontractor in the proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Contractor used the small business concern's pricing or cost information or technical expertise in preparing the proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work when the modification is executed.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to the payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(End of Clause)

Class Deviation 2019-O0005—Small Business Subcontract Reporting. Effective immediately. This deviation remains in effect until eSRS is modified to support ISRs for orders against BOAs and BPAs, or until otherwise rescinded.

Alternate IV (Jan 2019) (DEVIATION 2019-O0005). When incorporating a subcontracting plan in orders against basic ordering agreements and blanket purchase agreements due to a modification as specified in 19.702(a)(3), substitute the following paragraphs (c), (d), and (l) for paragraphs (c), (d), and (l) of the basic clause:

(c)(1) The Contractor, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Contractor is submitting an individual subcontracting plan, the plan shall separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small



business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be incorporated into the contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. The subcontracting plan does not apply retroactively.

(2)(i) The prime Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

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

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor 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. In accordance with 43 U.S.C. 1626—

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the

subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the Contractor, and the subcontractors in between the Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

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

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

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

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

(6) A statement as to whether or not the Contractor 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 (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

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

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

(9) Assurances that the Contractor will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Contractor will—

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

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

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for an indefinite-delivery, indefinite-quantity contract with an individual subcontracting plan where the contract is intended for use by multiple agencies;

(iv) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (I)(1) of this clause. Submit the Summary Subcontract Report (SSR) in

accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and

Indian tribes that have not been certified by SBA as small disadvantaged businesses), and women-owned small business concerns. Reporting shall be in accordance with this clause;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 and SSR in accordance with paragraph (l) of this clause;

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

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

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

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, indicating—

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

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

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

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

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

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

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

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

(12) Assurances that the Contractor will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the proposal for the modification, in the same or greater scope, amount, and quality used in preparing and submitting the modification proposal. Responding to a request for a quote does not constitute use in preparing a proposal. The Contractor used a small business concern in preparing the proposal for a modification if—

(i) The Contractor identifies the small business concern as a subcontractor in the proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Contractor used the small business concern's pricing or cost information or technical expertise in preparing the proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work when the modification is executed.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to the payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely

payment to a small business subcontractor (see 52.242-5).

(l) The Contractor shall submit a SF 294 in accordance with paragraph (l)(1). The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) SF 294. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan. For Contractors the report shall be submitted to the Contracting Officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When a Contracting Officer rejects a report, the Contractor shall submit a revised report within 30 days of receiving the notice of report rejection.

(ii)(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the report on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(2) SSR.

(i) Reports submitted under individual subcontracting plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g., plant or division operating as a separate profit center) basis.

(C) If the Contractor and/or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30, for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor is required to submit a revised SSR within 30 days of receiving the notice of report rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within 30 days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)



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

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

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

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

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

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

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

(End of Clause)

## **52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JULY 2013)**

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small

business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards> .

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_. [Contractor to sign and date and insert authorized signer's name and title].

(End of Clause)

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

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

(End of Clause)

## **52.222-3 CONVICT LABOR (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment

imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

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

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

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

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

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

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

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

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

(End of Clause)

## **52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS -- OVERTIME COMPENSATION. (MAY 2018)**

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

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for

liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

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

(d) Payrolls and basic records.

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

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

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

## **52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018)**

(a) Definition.—“Site of the work”—

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such

laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) 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.

(c)

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

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

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

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

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

Wage and Hour Division  
U.S. Department of Labor  
Washington, DC 20210

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

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

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

(d) 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.

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

(End of Clause)



## **52.222-7 WITHHOLDING OF FUNDS (MAY 2014)**

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 Construction Wage Rate Requirements statute prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of Clause)

## **52.222-8 PAYROLLS AND BASIC RECORDS (AUG 2018)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, 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 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

(1) The Contractor shall submit weekly for each week in which any contract work is

performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

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

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

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

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

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

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

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting

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

(End of Clause)

## **52.222-9 APPRENTICES AND TRAINEES (JUL 2005)**

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) 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.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of

progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) 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.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(1) 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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and

journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of Clause)

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

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

(End of Clause)

## **52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)**

(a) Definition. "Construction, alteration or repair," as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Construction Wage Rate Requirements;
  - (2) Contract Work Hours and Safety Standards -- Overtime Compensation (if the clause is included in this contract);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination – Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Construction Wage Rate Requirements and Related Regulations; and
  - (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)
- (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
  - (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.
- (End of Clause)

## **52.222-12 CONTRACT TERMINATION--DEBARMENT (MAY 2014)**

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

(End of Clause)

## **52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)**

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of Clause)

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

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

(End of Clause)

## **52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)**

- (a) 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 40 U.S.C. 3144(b)(2) 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 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18

U.S.C. 1001.

(End of Clause)

## **52.222-21 Prohibition of Segregated Facilities (Apr 2015)**

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

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

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

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

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

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

(End of Clause)

## **52.222-26 EQUAL OPPORTUNITY (SEP 2016)**

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

“Compensation” means any payments made to, or on behalf of , an employee or offered to an applicant as remuneration for employment, including but not limited to



salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

“Compensation information” means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor’s profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

“Essential job functions” means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)

(1) 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 this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of

individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)

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

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to --

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(v) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

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

(viii) Selection for training, including apprenticeship.

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

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

(5)

(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by--

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) 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.

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

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

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

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

(11) The Contractor shall include the terms and conditions 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.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP 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.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

[Class Deviation- 2017-O0008, Office of Federal contract Compliance Programs Waiver of Certain Clause Requirements in Contracts for Hurricane Harvey Relief Efforts. This clause deviation is effective on Sept 01, 2017, and remains in effect until incorporated into the FAR, or otherwise rescinded.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1. Notwithstanding the provisions of this section, the Contractor will not be obligated to develop the written affirmative action program required under the regulations implementing E.O. 11246.

(End of Clause)

## **52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)**

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

“Covered area” means the geographical area described in the solicitation for this contract.

“Deputy Assistant Secretary” means the Deputy Assistant Secretary for Federal

Contract Compliance, U.S. Department of Labor, or a designee.

“Employer’s identification number” means the Federal Social Security number used on the employer’s quarterly Federal tax return, U.S. Treasury Department Form 941.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

“Minority” means --

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

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

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

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

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) .

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

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

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

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

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

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

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

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

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

employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

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

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

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

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

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

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

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

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

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

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

(9) Direct recruitment efforts, both oral and written, to minority, female, and community

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

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

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

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

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

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

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

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

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

(1) Actively participates in the group;



- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
  - (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
  - (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
  - (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
  - (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
  - (n) The Contractor shall designate a responsible official to --
- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

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

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

(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).

(End of Clause)

## **52.222-35 Equal Opportunity for Veterans (Oct 2015)**

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

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.

**[Class Deviation- 2017-O0008, Office of Federal contract Compliance Programs Waiver of Certain Clause Requirements in Contracts for Hurricane Harvey Relief Efforts. This clause deviation is effective on Sept 01, 2017, and remains in effect until incorporated into the FAR, or otherwise rescinded.]**

(d) Notwithstanding the provisions of this section, the Contractor will not be obligated to develop the written affirmative action program required under the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

(End of Clause)

## **52.222-36 Equal Opportunity for Workers With Disabilities (Jul 2014)**

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**[Class Deviation- 2017-O0008, Office of Federal contract Compliance Programs Waiver of Certain Clause Requirements in Contracts for Hurricane Harvey Relief Efforts. This clause deviation is effective on Sept 01, 2017, and remains in effect until incorporated into the FAR, or otherwise rescinded.]**

(c) Notwithstanding the provisions of this section, the Contractor will not be obligated to develop the written affirmative action program required under the regulations implementing section 503 of the Rehabilitation Act of 1973, as amended.

(End of Clause)

## **52.222-37 Employment Reports on Veterans (Feb 2016)**

(a) *Definitions.* As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

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

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge

veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm> ).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date--

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of Clause)

## **52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the national Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm> ; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of Clause)

## **52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019)**

(a) Definitions. As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;  
or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Commercially available off-the-shelf (COTS) item” means--

(1) Any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Recruitment fees” means- Fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for--

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents,

such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other

notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs--

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and



(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is--

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to--

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

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

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking

place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described

in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination

clause of this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation.

(1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights;

or

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) Compliance plan.

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employees, and ensures that wages meet applicable host-country legal

requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired

outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of Clause)

## **52.222-54 Employment Eligibility Verification (Oct 2015)**

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to



purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section ); or

(ii) Employees assigned to the contract. For each employee assigned to the contract,

the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify> .

(d) Individuals previously verified. The Contractor is not required by this clause to

perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.

(End of Clause)

## **52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015)**

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

"United States" means the 50 states and the District of Columbia.

"Worker"—

(1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and—

(i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C.

chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum Wage rate.

(1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site) and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)

(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to workers as defined in paragraph (a). As provided in that definition--

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to--

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to--

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts), in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice

electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of Clause)

## **52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017)**

(a) Definitions. As used in this clause (in accordance with 29 CFR 13.2)--

"Child, domestic partner, and domestic violence" have the meaning given in 29 CFR 13.2.

"Employee"—

(1)

(i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);



(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) An employee performs ``on" a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs ``in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

“Individual related by blood or affinity whose close association with the employee” is the equivalent of a family relationship has the meaning given in 29 CFR 13.2.

“Multiemployer plan” means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

“Paid sick leave” means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

“Parent, sexual assault, spouse, and stalking” have the meaning given in 29 CFR 13.2.

“United States” means the 50 States and the District of Columbia.

(b) Executive Order 13706.

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

(c) Paid sick leave. The Contractor shall--

- (1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;
  - (2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR part 13;
  - (3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;
  - (4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;
  - (5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and
  - (6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR part 13, and this clause.
- (d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).
- (e) Withholding. The Contracting Officer will, 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 or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR part 13, or this clause, including--
- (1) Any pay and/or benefits denied or lost by reason of the violation;
  - (2) Other actual monetary losses sustained as a direct result of the violation; and
  - (3) Liquidated damages.
- (f) Payment suspension/contract termination/contractor debarment.
- (1) In the event of a failure to comply with E.O. 13706, 29 CFR part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
  - (2) Any failure to comply with the requirements of this clause may be grounds for

termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR part 13.

(h) Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13.

(i) Recordkeeping.

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

(i) Name, address, and social security number of each employee.

(ii) The employee's occupation(s) or classification(s).

(iii) The rate or rates of wages paid (including all pay and benefits provided).

(iv) The number of daily and weekly hours worked.

(v) Any deductions made.

(vi) The total wages paid (including all pay and benefits provided) each pay period.

(vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2).

(viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.

(ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR part 13 as described in 29 CFR 13.5(f)(5), leave shall be designated in records as paid sick leave

pursuant to E.O. 13706).

(x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3).

(xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee.

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.

(xiii) The relevant contract.

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)

(i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

(ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(1)(i) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor

Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

(4)

(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 13658, their respective implementing regulations, or any other applicable law.

(j) Interference/discrimination.

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13. Interference includes, but is not limited to--

- (i) Miscalculating the amount of paid sick leave an employee has accrued;
- (ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;
- (iii) Discouraging an employee from using paid sick leave;
- (iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;
- (v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;
- (vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or
- (vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for--

- (i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;
  - (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR part 13;
  - (iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR part 13; or
  - (iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR part 13.
- (k) Notice. The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.
- (l) Disputes concerning labor standards. Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract.

Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

(m) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of Clause)

## **52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

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

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

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall -- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration --

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about --

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will --

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and



(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of Clause)

## **52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)**

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(End of Clause)

## **52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

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

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of Clause)

## **52.225-11 BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (OCT 2016)**

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

“Caribbean Basin country construction material” means a construction material that--

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

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

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

“Cost of components” means--

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

paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

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

(2) A construction material manufactured in the United States, if—

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

(ii) The construction material is a COTS item.

“Free Trade Agreement country construction material means” a construction material that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

“Least developed country construction material” means a construction material that--

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that--

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: **NONE.**

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

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

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

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

(c) Request for determination of inapplicability of the Buy American Statute.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of Clause)

## **52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**

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

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

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

(End of Clause)

## **52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)**

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C.1452(c) and any



“Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the:

U.S. Department of the Interior  
Bureau of Indian Affairs (BIA)  
Attn: Chief, Division of Contracting and Grants Administration  
1849 C Street, NW, MS-2626-MIB  
Washington, DC 20240-4000

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of Clause)

## **52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance, the entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of Clause)

## **52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)**

(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 the Contractor's possession pertaining to such claim or suit. 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 shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of Clause)

## **52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)**

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if --

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

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

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of Clause)

## **52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance 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 notify 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. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of Clause)

## **52.228-11 PLEDGES OF ASSETS (AUG 2018)**

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond --

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form); and/or

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at <https://www.justice.gov/enrd/page/file/922431/download>. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of Clause)

## **52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS. (MAY 2014)**

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by sections 2091 and 8105 of Pub. L. 103-355 (10 U.S.C. 2302 note), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of Clause)

## **52.228-14 Irrevocable Letter of Credit (NOV 2014)**

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and --

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of --

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of --

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d)

(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The Offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the Web stie <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(e) The following format shall be used by the issuing financial institution to create an ILC:

\_\_\_\_\_  
[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_ (for reference only)

To: [U.S. Government agency]  
[U.S. Government Agency's Address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ \_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of

delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_\_ (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [State of confirming financial institution, if any, otherwise State of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_  
[Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$ \_\_\_\_\_ and expiring with our close of



business on \_\_\_\_\_ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_\_ (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [State of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

Sight Draft

\_\_\_\_\_  
[City, State]

(Date) \_\_\_\_\_

[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Beneficiary Agency] \_\_\_\_\_ the sum of  
United States \$ \_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit  
No. \_\_\_\_\_.

\_\_\_\_\_  
[Beneficiary Agency]

\_\_\_\_\_  
[By]

(End of Clause)

## **52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (OCT 2010)**

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

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance Bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to

increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782  
Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of Clause)

## **52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)**

(a) As used in this clause--

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

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

date.

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

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

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

(b)

(1) The contract price includes all applicable Federal, State, and local taxes and duties except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

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

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

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

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

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

(h) The Government shall, without liability, furnish evidence appropriate to establish

exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of Clause)

## **52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 2014)**

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

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

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

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

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

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

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

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

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

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

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

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made:

(However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

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

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

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

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

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

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

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

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

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until --

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

(ii) The date the Contractor reduces the amount of any subsequent certified request for

progress payments by an amount equal to the unearned amount.

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

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 6305).

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

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

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

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

(End of Clause)

## **52.232-16 PROGRESS PAYMENTS (APR 2012)**

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts.

(1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due will be paid to subcontractors--

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under



employee pension plans until actually paid unless--

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to the subcontractors or suppliers, except for--

(A) completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) Liquidation. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidation's and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension. The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's --

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) Title.

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; e.g., the termination clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall

(i) exclude the allocable costs of the property from the costs of contract performance, and

(ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not --

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this

clause.

(e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

(f) Control of costs and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports and access to records.

(1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

(h) Special terms regarding default. If this contract is terminated under the Default clause,

(i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and

(ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

(1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) Financing payments to subcontractors. The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to—

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form or progress payments, the terms of the subcontract or interdivisional order concerning progress payments --

(i) Are substantially similar to the terms of the clause for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if --

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Part 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in Subpart 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) Limitations on undefinitized contract actions. Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) Due date. The designated payment office will make progress payments on the **30<sup>th</sup>** day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make a payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) Progress payments under indefinite-delivery contracts. The Contractor shall

account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of Clause)

## **52.232-17 INTEREST (MAY 2014)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract 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 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) 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) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) 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, including any demand for payment resulting from a default termination.



(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

- (1) The date on which the designated office receives payment from the Contractor;
- (2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of Clause)

## **52.232-23 ASSIGNMENT OF CLAIMS (MAY 2014)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of Clause)

## **52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JAN 2017)**

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date

of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments --

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

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

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

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

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

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

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

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

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper

invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

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

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

(iv) Description of work or services performed.

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

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

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

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

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

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

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

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

52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

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

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

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

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

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

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

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

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

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues

involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

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

(6) Additional interest penalty.

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

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

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

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

(ii)

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

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

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

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

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the

Government will determine the demand's validity based on the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments -- If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause --

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to--

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that --

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the

parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if --

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall --

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and --

(i) Make such payment within --

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon --

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying --

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until --

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports --

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with 40 U.S.C. 3133, asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause --

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.



(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall --

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying --

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may

not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(vi) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of Clause)

## **52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-- SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Method of payment.

(1) All payments by the Government under this contract, shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM and shall be paid by EFT in accordance with the terms of

this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

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

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM.

(End of Clause)

## **52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulation and procedures.

(End of Clause)

### **52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)**

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of Clause)

### **52.233-1 DISPUTES. (MAY 2014) -- ALTERNATE I (DEC 1991)**

This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is

disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.

The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR

33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6- month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(End of Clause)

### **52.233-3 PROTEST AFTER AWARD (AUG 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of Clause)

#### **52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

(End of Clause)

#### **52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)**

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

(End of Clause)

#### **52.236-2 DIFFERING SITE CONDITIONS (APR 1984)**

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --



(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of Clause)

### **52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and

(5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of Clause)

## **52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)**

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the

work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of Clause)

#### **52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of Clause)

#### **52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of Clause)

#### **52.236-8 OTHER CONTRACTS (APR 1984)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of Clause)

#### **52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of Clause)

## **52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)**

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity

recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of Clause)

## **52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)**

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of Clause)

## **52.236-12 CLEANING UP (APR 1984)**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of Clause)

## **52.236-13 ACCIDENT PREVENTION (NOV 1991)**

(a) The Contractor shall provide and maintain work environments and procedures which

will --

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall --

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of Clause)

## **52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)**

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of Clause)

## **52.236-16 QUANTITY SURVEYS (APR 1984)**

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on

these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of Clause)

## **52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)**

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail

(1) the proposed fabrication and assembly of structural elements, and



(2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of Clause)

## **52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)**

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of Clause)

## **52.242-5 Payments to Small Business Subcontractors (Jan 2017)**

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

“Reduced payment” means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

“Untimely payment” means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) Notice. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after--

(1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor--

(i) Made a reduced or untimely payment to the small business subcontractor; or

(ii) Failed to make a payment, which is now untimely.

(c) Content of notice. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

(End of Clause)

## **52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of Clause)

## **52.242-14 SUSPENSION OF WORK (APR 1984)**

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted

(1) by an act of the Contracting Officer in the administration of this contract, or

(2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed --

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of Clause)

## **52.243-4 CHANGES (JUN 2007)**

(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 property or services; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating --

(1) The date, circumstances, and source of the order; and

(2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of Clause)

## **52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2019)**

(a) Definitions. As used in this clause—

“Commercial item and commercially available off-the-shelf item” have the meanings contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016) other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c ) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(xi) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii)

(A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiv) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvi)

(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xvii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xviii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual

obligations.

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

(End of Clause)

## **52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)**

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not --

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special,

full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may --

(1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or

(2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of Clause)

## **52.248-3 VALUE ENGINEERING--CONSTRUCTION (OCT 2015)**

(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 (c)(1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, and the effect of the change on the end item’s performance.

- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

- (3) A separate, detailed cost estimate for

- (i) the affected portions of the existing contract requirement and
- (ii) the VECP.

The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

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

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall

perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing --

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by --

(i) 45 percent for fixed-price contracts; or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to --

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$70,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering -- Construction clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of Clause)

## **52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)**

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.

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:

Stop work as specified in the notice.

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.

Terminate all subcontracts to the extent they relate to the work terminated.

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.

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.

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.

Complete performance of the work not terminated.

) 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.

Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

After expiration of the plant clearance period as defined in Subpart 49.001 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.

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.

Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

The total of--

The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting

Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

The reasonable costs of settlement of the work terminated, including--

Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

The termination and settlement of subcontracts (excluding the amounts of such settlements); and

Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

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.

The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted--

All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

Any claim which the Government has against the Contractor under this contract; and

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.

If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with

interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records

and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of Clause)

## **52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)**

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if --

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include --

(i) Acts of God or of the public enemy,



- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (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.

(End of Clause)

## **52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of

the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of Clause)

## **252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)**

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of Clause)

## **252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP2011)**

(a) Definition. "Covered DoD official," as used in this clause, means an individual that—

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of \$10 million, and serves or served—

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 2105(c).

(End of Clause)

## **252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT- RELATED FELONIES (DEC 2008)**

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

- (1) In a management or supervisory capacity on this contract;
- (2) On the board of directors of the Contractor;
- (3) As a consultant, agent, or representative for the Contractor; or
- (4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
- (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition

Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone 301-937-1542; [www.ojp.usdoj.gov/BJA/grant/DPFC.html](http://www.ojp.usdoj.gov/BJA/grant/DPFC.html).

(End of Clause)

## **252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of Clause)

## **252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012)**

The agency office of the Inspector General referenced in paragraphs (c) and (d) of FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct, is the DoD Office of Inspector General at the following address:

Department of Defense Office of Inspector General  
Investigative Policy and Oversight

Contractor Disclosure Program

4800 Mark Center Drive, Suite 11H25  
Alexandria, VA 22350-1500

Toll Free Telephone: 866-429-8011

(End of Clause)

## **252.204-7000 DISCLOSURE OF INFORMATION (OCT 2016)**

As prescribed in 204.404-70(a), use the following clause:

### **DISCLOSURE OF INFORMATION (OCT 2016)**

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of Clause)

## **252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(End of Clause)

## **252.204-7006 BILLING INSTRUCTIONS (OCT 2005)**

When submitting a request for payment, the Contractor shall—

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of Clause)

## **252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)**

(a) Definitions. As used in this clause—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits

covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are



defined in the clause at DFARS 252.227-7013, Rights in Technical Data—

Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems

and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the

DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see

<http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of Clause)

## **252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)**

(a) Definitions. As used in this clause—

“Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

“Litigation support” means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

“Litigation support contractor” means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors.

“Sensitive information” means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

“Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) Notice of authorized disclosures. Notwithstanding any other provision of this solicitation or contract, the Government may disclose to a litigation support contractor, for the sole purpose of litigation support activities, any information, including sensitive information, received--

(1) Within or in connection with a quotation or offer; or

(2) In the performance of or in connection with a contract.

(c) Flowdown. Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items.

(End of Clause)

## **252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)**

(a) Definition. "Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of Clause)

## **252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (MAY 2019)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of the threshold specified in Federal Acquisition Regulation 9.405-2(b) on the date of subcontract award with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the

System for Award Management (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting

Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

(End of Clause)

## **252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)--BASIC (MAY 2019)**

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. As used in this clause—

“Summary Subcontract Report (SSR) Coordinator” means the individual who is

registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the

Committee for Purchase From People Who Are Blind or Severely Disabled (41 U.S.C.

8502-8504), may be counted toward the Contractor's small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the

Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the "Department of Defense."

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Include the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219-7004, Small Business Subcontracting Plan (Test Program), in

subcontracts with subcontractors that participate in the Test Program described in

DFARS 219.702-70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a) and to have further

subcontracting opportunities.

(End of Clause)

## **252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)**

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.



(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of Clause)

## **252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)**

(a) Definitions. As used in this clause—

"Homogeneous material" means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate.

"Mechanically disjointed" means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) Prohibition.

(1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that—

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial items, that are for supplies, maintenance and repair services, or construction materials.

(End of Clause)

## **252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)**

(a) Definitions. As used in this clause—

“Component” means any item supplied to the Government as part of an end product or of another component.

“End product” means supplies delivered under a line item of this contract.

“Qualifying country” means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Egypt

Estonia

Finland

France

Germany

Greece

Israel

Italy

Japan

Latvia

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland.

“Structural component of a tent”—

(i) Means a component that contributes to the form and stability of the tent (e.g., poles,

frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

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

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

- (1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;
- (2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—
  - (i) Is not more than 10 percent of the total price of the end product; and
  - (ii) Does not exceed the simplified acquisition threshold in FAR Part 2;
- (3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;
- (4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;
- (5) To chemical warfare protective clothing produced in a qualifying country; or
- (6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—
  - (i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include ☐
    - (A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
    - (B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
    - (C) Upholstered seats (whether for household, office, or other use); and
    - (D) Parachutes (Federal Supply Class 1670); or
  - (ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.
- (d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

- (i) Shall be taken from the sea by U.S.-flag vessels; or
  - (ii) If not taken from the sea, shall be obtained from fishing within the United States;  
and
  - (2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.
- (End of Clause)

## **252.225-7048 EXPORT-CONTROLLED ITEMS (JUNE 2013)**

(a) Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
- (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
- (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

- (4) The Export Administration Regulations (15 CFR Parts 730-774);
  - (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
  - (6) Executive Order 13222, as extended.
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.
- (End of Clause)

## **252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)**

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of Clause)

## **252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN (APR 2019)**

(a) Definitions. As used in this clause—

“Covered material” means—

- (1) Samarium-cobalt magnets;
- (2) Neodymium-iron-boron magnets;
- (3) Tungsten metal powder; and
- (4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

“Covered country” means—

- (1) The Democratic People’s Republic of North Korea;
- (2) The People’s Republic of China;
- (3) The Russian Federation; and



(4) The Islamic Republic of Iran.

(b) Restriction.

(1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) Exceptions. This clause does not apply—

(1) To an end item that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(ii) An electronic device, unless otherwise specified in the contract; or

(iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018-4 of the Defense Federal Acquisition Regulation Supplement, that covered materials of satisfactory quality and

quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of Clause)

## **252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (DEC 2018)**

(a) Definitions. As used in this clause—

“Contract financing payment” means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at Federal Acquisition Regulation (FAR) 52.232-16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see FAR 32.102(e)), except those made under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at FAR 52.232-25, Prompt Payment, is used.

(2) Contract financing payments do not include—

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

“Electronic form” means any automated system that transmits information electronically from the initiating system to affected systems.

“Invoice payment” means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) Invoice payments include—

- (i) Payments for partial deliveries that have been accepted by the Government;
- (ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;
- (iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and
- (iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

“Payment request” means any request for contract financing payment or invoice payment submitted by the Contractor under this contract or task or delivery order.

“Receiving report” means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(b) Except as provided in paragraph (d) of this clause, the Contractor shall submit payment requests and receiving reports in electronic form using Wide Area WorkFlow (WAWF). The Contractor shall prepare and furnish to the Government a receiving report at the time of each delivery of supplies or services under this contract or task or delivery order.

(c) Submit payment requests and receiving reports to WAWF in one of the following electronic formats:

- (1) Electronic Data Interchange.
- (2) Secure File Transfer Protocol.
- (3) Direct input through the WAWF website.

(d) The Contractor may submit a payment request and receiving report using methods other than WAWF only when—

(1) The Contractor has requested permission in writing to do so, and the Contracting Officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of this contract or task or delivery order;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment on a contract or task or delivery order for rendered health care services using the TRICARE Encounter Data System; or

(4) The Governmentwide commercial purchase card is used as the method of payment, in which case submission of only the receiving report in WAWF is required.

(e) Information regarding WAWF is available at <https://wawf.eb.mil/>.

(f) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of Clause)

## **252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)**

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of Clause)

## **252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN (DEC 1991)**

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of Clause)

## **252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)**

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

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

(e) The work shall conform to the specifications and contract drawings identified in this solicitation.

(End of Clause)

## **252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)**

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et.seq).

(End of Clause)

## **252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)**

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

(1) \_\_\_\_\_ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining \_\_\_\_\_ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

- (i) Actual mobilization costs at completion of mobilization;
- (ii) Actual demobilization costs at completion of demobilization; and
- (iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of Clause)

## **252.242-7004 MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)**

(a) Definitions. As used in this clause—

(1) “Material management and accounting system (MMAS)” means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) “Valid time-phased requirements” means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) “Contractor” means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(4) “Acceptable material management and accounting system” means a MMAS that generally complies with the system criteria in paragraph (d) of this clause.

(5) “Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall—

(1) Maintain an MMAS that—



(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) Disclosure and maintenance requirements. The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) System criteria. The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions, such as excess/residual inventory, as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine-readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411-50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The “loan/pay-back technique” means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls

(in addition to those in paragraphs (d)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (d)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(e) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval if the Contracting Officer determines that one or more

significant deficiencies remain.

(f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's MMAS, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

## **252.242-7006 ACCOUNTING SYSTEM ADMINISTRATION (FEB 2012)**

(a) Definitions. As used in this clause—

(1) "Acceptable accounting system" means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

(2) "Accounting system" means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

(3) "Significant deficiency" means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish and maintain an acceptable accounting system. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the clause at 252.242-7005, Contractor Business Systems, and also may result in disapproval of the system.

(c) System criteria. The Contractor's accounting system shall provide for—

- (1) A sound internal control environment, accounting framework, and organizational structure;
- (2) Proper segregation of direct costs from indirect costs;
- (3) Identification and accumulation of direct costs by contract;
- (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
- (5) Accumulation of costs under general ledger control;
- (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
- (7) Approval and documentation of adjusting entries;
- (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
- (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
- (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
- (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
- (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of Federal Acquisition Regulation (FAR) part 31, Contract Cost Principles and Procedures, and other contract provisions;
- (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
- (14) Segregation of preproduction costs from production costs, as applicable;
- (15) Cost accounting information, as required—
  - (i) By contract clauses concerning limitation of cost (FAR 52.232-20), limitation of funds (FAR 52.232-22), or allowable cost and payment (FAR 52.216-7); and
  - (ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

## **252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost

principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(End of Clause)

## **252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)**

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)\_\_\_\_\_

(Title)\_\_\_\_\_

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including ☐

(1) Certified cost or pricing data, if required, in accordance with subsection

15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Data other than certified cost or pricing data, in accordance with subsection

15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to ☐

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type

contract, or progress payment invoices; or

(2) Final adjustments under an incentive provision of the contract.

(End of Clause)

## **252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA—BASIC (FEB 2019)**

(a) Definitions. As used in this clause—

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

“Subcontractor” means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.



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

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

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

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

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

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

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) If the Contractor indicated in response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Notify the Contracting Officer of that fact; and

(2) Comply with all the terms and conditions of this clause.

(i) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (i), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of Clause)

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SECTION 01 00 00

ADDITIONAL SPECIAL CONTRACT REQUIREMENTS  
**MsCIP Comprehensive Barrier Island Restoration Plan - Ship Island Phases 3  
and 4**

PART 1 GENERAL

1.1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

The Contractor shall be required to (a) commence work under this contract, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than the time specified in the Solicitation. If the estimated quantity and actual quantity of the Beach Fill bid item for this contract 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 estimated quantity for the Beach Fill bid items is based on the volume difference between the Ship Island Phase 1 completed template and the lines and grades shown on the contract drawings (see Appendix C for quantity details). The actual quantity of the beach fill will be based on the volume difference between the pre-construction surveys collected in accordance with paragraph Pre-construction Surveys and the lines and grades shown on the contract drawings. 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. Tolerance quantity is not subject to this clause. 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 judgment of the Contracting Officer, is justified. Reference SECTION 35 20 25, paragraph entitled PROJECT ORDER OF WORK, for additional information and requirements. The time stated for completion shall include final cleanup of the premises.

1.2 LIQUIDATED DAMAGES - CONSTRUCTION

- (a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages in the amount of \$5,604.00, for each calendar day until the work is completed and accepted.
- (b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

1.3 SUBMITTALS

See the technical sections for approval and detail requirements for submittals. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES and the required technical section:

SD-01 Preconstruction Submittals

Survey Plan; G, OP

SD-05 Design Data

Preconstruction Surveys; G, OP

Acceptance Surveys; G, OP

Post-construction Surveys; G, OP

SD-06 Test Reports

Daily Survey Reports

SD-11 Closeout Submittals

Contractor Prepared As-Built Drawings; G, OP

1.4 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS

(a) The Contractor will be furnished with one CD-ROM containing a reproducible copy of the advertised solicitation, including all contract clauses, drawings, and specifications. Paper copies of the specifications and drawings will be the responsibility of the Contractor. The work shall conform to the specifications and the contract drawings listed in the technical provisions.

(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 them 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.

(d) The list of drawings and maps provided in the Index Sheet of the Plans for this solicitation are hereby incorporated by reference into these specifications. Any schedules included in the drawings are for the purpose of defining requirements other than quantities.

NOTE: Refer to the folio of drawings for the index of drawings in this solicitation.

1.5 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government will not be responsible for any interpretation or conclusion drawn from the data or information by the Contractor.

(a) General: The indications of physical conditions on the drawings and in the specifications are the result of a combination site investigations, surveys, and future anticipated.

(b) Location: The sand placement/beach fill work to be done under these specifications is located at Camille Cut and East Ship Island in Harrison Co., Mississippi approximately 15 miles by water southeast of Gulfport, Mississippi, and approximately 23 miles by water southwest of Pascagoula, Mississippi. The borrow areas for the project are located in the Gulf of Mexico, south of Petit Bois Island, approximately 25 - 35 miles from the placement site in water depths of approximately 40 - 60 feet. These locations, in general, are shown on National Oceanic and Atmospheric Administration (NOAA) Nautical Chart Nos. 11372 and 11373.

(c) Contractor's Investigation Responsibility: The Contractor should investigate submerged, surface, and overhead structures in the work areas and other locations which may be necessary to traverse. The exact location, depths, and height of submarine cables, pipes, highlines, docks, piers, bulkheads, bridges, etc. (as applicable), are not known and it will be necessary for the Contractor to ascertain interference problems and notify the respective owners in advance of dredging operations. The Contractor shall make all arrangements with the respective owners of the structure to assure satisfactory completion of work in the vicinity with a minimum interruption of service, and shall perform operations in such a manner as will avoid damage to these facilities. Considering the above specified structures and any others the Contractor might find in the work areas, the Contractor shall use extreme care when placing fill material in the vicinity of any land or marine structures. If existing land or marine structures are damaged by the dredging and sand placement operations, it will be the responsibility of the Contractor to repair or rebuild the damaged facility at no cost to the Government.

(d) Weather Conditions: The sites of the work are exposed to local disturbances in Mississippi Sound and the upper Gulf of Mexico which may cause suspension of the work. Generally, the sites of the work do not provide safe refuge from tropical storms or hurricanes which may occur from June to December. Should a tropical storm or hurricane occur during the course of the work, it will be the responsibility of the Contractor to select a safe harbor. The Contractor should investigate all the sites of the work and determine the requirements of the work. The mean tidal range is approximately 1.4 feet at the Gulfport Harbor. The work area(s) are affected by extended periods of strong winds, predominately from the south or southeast. Lost time due to opposing adverse natural elements as outlined above will be considered justification for an extension of the contract time.

(e) Transportation Facilities: The work areas are accessible by water via the Mississippi Sound and the Gulf of Mexico. The Contractor shall investigate any limitations imposed by bridges or other structures on water access to the project site. Highway access (Federal, state, and local) is available to all port and boat ramp facilities in the area. Rail facilities are also available to the general vicinity of the Gulfport areas via the Kansas City Southern Railway Company Railroad. The Contractor shall make their own investigation of available roads for transportation, load limits for bridges and roads, and other road conditions affecting the transportation of materials and equipment to the work sites.

(f) Channel Traffic: The traffic using the Gulfport and Pascagoula Federal Navigation channels and the gulf near-shore areas to be dredged under these specifications is considered to be a combination of heavy and large commercial vessels, and various sized recreational craft, respectively. The type of traffic consists of general cargo ships, fuel

tankers, tow boats, Navy ships, charter fishing boats, passenger boats, and pleasure craft. The traffic using the area consists principally of fishing and shrimp boats, tow boats, barges, and pleasure craft. CAUTION: When navigation conditions become hazardous due to inclement weather (fog, storm, etc) or other circumstances, the Contractor shall maintain appropriate communication with project traffic. The Contractor shall particularly comply with all U.S. Coast Guard regulations pertaining to proper activation of fog (and any other) signaling devices (sound, light, etc).

(g) Obstruction of Navigation Channels: The Government will not undertake to keep the work areas and navigation channels 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 Rivers and Harbors 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 any navigation 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 their plant, including ranges, buoys, piles, and other marks placed by them under the contract in navigable waters or on shore.

#### 1.6 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

a. This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default (Fixed Price Construction)". In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

b. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

c. The unusually severe weather must actually cause a delay to the completion of the project, or portion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

d. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

#### MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	5	4	3	4	5	6	6	4	3	4	5

e. Upon acknowledgement of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally



scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days shown above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the Contract Clause entitled "Default (Fixed Price Construction)".

#### 1.7 CONTRACTOR PREPARED AS-BUILT DRAWINGS

(a) General: In accordance with SPECIAL CONTRACT REQUIREMENT paragraph: CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS, the Government will furnish the Contractor on CD-ROM one electronic set of solicitation drawing files and any amendments for use in preparation of as-built drawings by the Contractor. Copies of the drawings will be the responsibility of the Contractor. The as-built drawings shall be a record of the construction as completed by the Contractor. They shall include all the information shown on the contract set of drawings and a record of all deviations, modifications, or changes from those drawings, however minor, which were incorporated in the work, all additional work not appearing on the contract drawings, and all changes which are made after final inspection of the contract work. In the event the Contractor accomplishes additional work which changes the as-built conditions after submission of the as-built drawings, the Contractor shall furnish revised and/or additional drawings as required to depict as-built conditions. The requirements for these additional drawings will be the same as for the as-built drawings included in the original submittal.

(b) Red line as-built drawings: The Contractor shall have on his staff, personnel to mark up a set of paper copy construction drawings to show the as-built conditions. These as-built marked copies shall be kept current and available on the job site at all times. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded, as the events occur, by means of details and notes. The Contractor shall call attention to entries by red lining areas affected. The red line as-built drawings will be jointly inspected for accuracy and completeness by the Contracting Officer's Representative and a responsible representative of the Contractor prior to submittal of each request for payment. The Contracting Officer Representative's approval of the current status of the as-built drawings shall be a prerequisite to the approval of request for progress payment and request for final payment under the contract. The drawings shall show the following information, but not be limited thereto:

(1) The location and description of any utility lines or other installations of any kind or description known to exist within the construction area that are not already shown on the contract drawings. The location includes dimensions to permanent features.

(2) The location and dimensions of any changes within the construction area.

(3) All changes or modifications which result from the final inspection.

(c) Submittal of as-built drawings for review and approval: The Contractor shall participate in monthly review meetings with the Contracting Officer's Representative to show the progress made the preceding month and make all required changes. At time of final construction inspection, the Contractor shall submit one copy of the red lined as-built drawings to the Contracting Officer's Representative for his review and approval. The as-built drawings shall be certified as to their correctness by the signature of an authorized representative of the Contractor. Upon Government approval of the Contractor's red lined copy of the as-built drawings, the Contractor shall prepare and provide two electronic sets of as-built drawings by incorporating the red line marked up notations on the construction drawings into the electronic set of solicitation drawings and amendments. In addition to the electronic sets of as-built drawings which shall be submitted on a CD-ROM, the Contractor shall also submit a full size set of as-built paper drawings. Submittals are to be to the Contracting Officer's Representative not later than ten (10) calendar days after project completion date.

(d) Final Drawing Format.

(1) The solicitation drawing files and any amendments thereto will be furnished to the Contractor in electronic format. The solicitation drawing files have been prepared in MicroStation format. The Contractor shall utilize the latest version of MicroStation to revise/redraft each solicitation drawing and/or amendment drawing to reflect all changes made during construction as indicated by the red line marked up notations on the construction drawings. Revisions/redrafting shall match the font styles, sizes, and formats; line weights/thicknesses and styles/types; and all other drafting elements used on the solicitation drawing/amendments. All elements must be incorporated into each as-built drawing file; the use of reference files shall not be permitted.

(2) All revisions made to the solicitation drawings and/or amendment drawings to reflect changes made during construction shall be flagged and shall have the revision block completed as follows. The entry in the description column of the revision block shall read "AS-BUILT". The date of the revision and one approving initial from a responsible person within the Contractor's Firm shall also be included in the revision block. Above the drawing title block the drawing will be labeled in bold letters "AS-BUILT". The flagged changes and revision block format shall be in accordance with the examples shown in the Mobile District Design Manual located on the Internet at

<http://www.sam.usace.army.mil/Missions/MilitaryMissions/Engineering/Engineering-Design-Manual/>

The Contractor shall also furnish a revised index of drawings to match the actual design drawings. The drawing title blocks shall be in a uniform format to match the requirements as specified in the Design Manual.

(3) The two electronic sets of as-built drawing files shall be submitted in MicroStation format.

(4) The hard copy reproducible set of as-built drawings shall be submitted unbound on paper. The drawings shall be the full size.

(e) Payment: No separate payment will be made for preparation of the as-built drawings required under this contract. All costs will be

considered a subsidiary obligation of the contract.

#### 1.8 ATTENDANT PLANT

(a) Attendant plant shall be composed of such barges, fuel, water, pipe derrick, anchor, etc., floating, submerged, and slip joint discharge pipe, and other attendant or auxiliary plant as may be required for operations under these specifications whether or not these items are specifically mentioned. The auxiliary and attendant plant shall be in good condition and of sufficient size and capability to efficiently serve the dredge.

(b) The Contractor shall furnish sufficient shore equipment to construct the beach fill in accordance with the contract plans and specifications. These items of equipment will be considered as part of the plant.

(c) Inspector's Office: The Contractor shall supply a portable trailer on site at all times during the progress of the contract work. The office shall have a lockable access door with the keys available to Government personnel. This trailer shall be a minimum of 8 feet by 20 feet and be supplied with adequate lighting, heating, air conditioning, and a generator capable of providing adequate power for trailer lighting, heating, air conditioning, and computer workstation with printer. The Contractor shall operate and maintain this generator throughout the contract period. This office shall be provided with completely functional toilet and washing facilities and shall be serviced on a regular periodic basis to maintain satisfactory hygienic and sanitary conditions. The Contractor shall relocate this office along the beach construction area as required by the Contracting Officer's Representative. The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price for Beach Fill. If the Contractor fails to meet these requirements, the facilities referred to above will be acquired by the Contracting Officer, and the cost thereof will be deducted from payments to the Contractor.

(d) Radio Telephone: The Contractor shall furnish and maintain the following radios for communication with the Corps of Engineers, United States Coast Guard, and other vessels: Radio(s) must be certified as being operable on the specified frequencies and powers by a licensed radio technician. A copy of the certification must be furnished to the Contracting Officer prior to final acceptance of the dredging plant.

(1) A Marine VHF Radio, FCC type accepted with the following channels: Channel 16, (156.8 MHZ), Channel 13, (156.65 MHZ), Channel 12, (156.6 MHZ), Channel 14, (156.7 MHZ), and Channels 26 and 28 for public correspondence. A separate receiver must be provided on Channel 13, (156.6 MHZ) in compliance with Public Law 92-63.

(2) In addition to the above-mentioned radios, the Contractor shall provide additional space in the inspector's office as specified in the paragraph entitled "Inspector's Office" for placement of one VHF marine radio. The radio shall be able to receive all VHF marine channels and scan two channels continuously. The radio will be furnished at the expense of the Contractor.

(3) The Contractor shall furnish two (2) 4G aircards for use by the Government Inspector. The 4G aircards shall be furnished prior to commencement of work and returned to the Contractor at the completion of

project.

(e) Transport Vessel: The Contractor shall provide one transport vessel, with twin propellers, not less than 40 feet in overall length, with enclosed space for three passengers, to adequately operate in all areas included in the scope of work. This vessel must have an operator on site at all times; be capable of traveling at a speed of 20 knots (23 MPH) or greater in good weather and capable of traveling safely at night and in intense fog; (such vessel shall meet or exceed US Coast Guard regulations for vessels 65 feet or less in length); and the vessel shall have a Certificate of Inspection by the US Coast Guard, or at least from a Marine Surveyor. This vessel shall be for the primary use of the Government Inspector. The use of this vessel for Contractor's crew changes, or any other use of this vessel by the Contractor shall be secondary to the Government Inspector shift changes. This vessel shall be equipped with the following at a minimum: built-in fuel tanks with correctly operating fuel gauges; marine and company radios; windshield wipers; running and spot lights; and all required survey equipment. The Contractor shall secure satisfactory landing location for this vessel.

#### 1.9 PRECONSTRUCTION CONFERENCE

(a) A preconstruction conference will be arranged by the Government's representative after award of contract and before commencement of work. The Government's representative will notify the Contractor of the time and date set for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and construction matters. Additionally, a schedule of required submittals will be discussed.

(b) The Contractor shall bring to this conference the submittals listed in Section 01 33 00 Paragraph entitled Preconstruction Submittals in either completed or draft form.

#### 1.10 PROJECT SIGN

The Contractor shall furnish and install a project sign and a safety performance sign at the location designated by the Contracting Officer's Representative within 60 calendar days after notice to proceed. The signs shall be constructed as indicated on the figures bound herein. Size, lettering, color, and paint shall conform to the details shown in Figure 5B "Construction Sign," Figure 5C "Fabrication and Mounting Guidelines," and Figure 5D "Safety Performance Sign," bound herein. All parts of frames and signs shall be given a primer coat of oil paint and a minimum of two finish coats of white semi-gloss paint. The Contractor shall maintain the sign in a "like new" condition throughout the life of the project, repainting and replacing members as necessary to accomplish this requirement. No direct payment will be made for the signs or maintenance of the signs.

#### 1.11 SURVEY REQUIREMENTS

The Contractor shall perform all necessary pre-construction, acceptance, and post-construction surveys of the beach fill and borrow areas. Additionally, the Contractor shall provide all intermediate surveys performed prior to acceptance to the Government for the record.

#### 1.11.1 Quality Control

The Contractor shall establish and maintain quality control for survey operations to assure compliance with the contractual requirements including but not limited to the following:

(a) Survey work shall be performed by survey personnel in accordance with all applicable Engineering Manuals (EM) found at <http://www.publications.usace.army.mil/USACE-Publications/Engineer-Manuals/>. All responsibilities for accuracy, completeness, and verification of survey work performed shall reside with the Contractor.

(b) The Contractor shall maintain complete and accurate field notes, sketches, recordings, and computations required in establishing the necessary horizontal and vertical control. All survey data shall be recorded in accordance with accepted standards and as approved by the Contracting Officer or his/her designated representative. All the above data shall be available at all times during the progress of the work for ready examination and use by the Contracting Officer or his/her designated representative. Upon request of the Contracting Officer or his/her designated representative, the Contractor shall furnish a copy of above survey data.

(c) Survey personnel. All quantity surveys required by the Contractor shall be made by personnel of a professional engineer and/or land surveyor experienced in the practice of such work including Global Positioning Systems (GPS) surveys. The survey personnel shall have the following minimum qualifications.

(1) Each party chief shall be a Professional Land Surveyor and shall be proficient in the operation of precise and semi-precise instruments. They shall be capable of running horizontal and vertical control of 2nd order accuracy. In the event it is considered advantageous to employ a party chief who is not a Professional Land Surveyor, detailed qualifications of the individual shall be submitted to the Contracting Officer for review and approval.

(2) Instrument personnel shall be proficient in the operation of precise and semi-precise instruments and shall prepare all survey notes in a firm and legible manner.

(3) Surveying technicians shall be familiar with all phases of surveys and the Mississippi plane coordinate system. They shall also be well versed in the computation and adjustment of horizontal and vertical control of 2nd and 3rd order survey.

(d) Daily survey reports shall be prepared by the Contractor for days requiring survey activity using SAM Form 696. All reports shall be signed by the Contractor's authorized representative and submitted to the Government's representative on the next duty day following the surveying activity. The reports shall include, but not be limited to: information on equipment used; location, description, and type work performed; inspections of work; verbal instructions received and actions taken; safety; and causes for delays.

(e) The Contractor shall be responsible for protection of all vegetation and/or property within surveying areas. If any portion of the surveying work requires the trimming of vegetation or use, in any way, of National Park Service facilities, specific written consent shall be obtained by the

Contractor from the Contracting Officer's Representative prior to the survey action.

(f) All survey work is subject to periodic inspection and/or verification by the Government during or after such work. If any portion of the survey work is found to be in error, it shall be the responsibility of the Contractor to correct such error at no cost to the Government. Presence of the Government representative on the work site does not release the Contractor from his responsibility to provide quality control of the required survey work nor does it release the Contractor from the responsibility for taking necessary corrective action should errors be found.

#### 1.11.2 Survey Plan

The Contractor shall prepare and submit for approval by the Contracting Officer's Representative a written survey plan, outlining the contract survey effort from start to completion. The plan shall cover, at a minimum, Contractor conducted layout work (including baseline control), and the details of the required surveys described in this specification. This plan shall coincide with the GENERAL WORK PLAN required in Section 35 20 25 - BEACH AND DUNE FILL. The Contractor's plan shall show a percentage breakdown of each type of survey phase (baseline, control, before-dredging, etc.) of the total survey effort for the job.

#### 1.11.3 Equipment and Data

##### 1.11.3.1 Real Time Kinematic (RTK) Global Positioning System (GPS)

All survey data shall be collected using RTK GPS technology.

##### 1.11.3.2 Sounding Equipment

Sounding equipment shall consist of an electronic sounding machine/device capable of providing updated soundings on not more than 1/20 second intervals and have accuracy rating of not more than +/-0.5 feet. Sounding device shall have analog charting (real time) within the device and shall have all the capabilities of calibrating to a bar check utilizing the Norfolk Method of bar checking. The sounding device will be similar and equal to the Odom MKIII Echo Sounder. All depths acquired will consist of dual frequency soundings utilizing a high operating 208 Khz frequency transducer and a low operating 41 Khz or 28 Khz frequency transducer. All digitally acquired sounding data for the borrow area surveys shall be those acquired with the high frequency survey (any frequencies other than those listed must be approved by the Government prior to use). Both the high and low frequency soundings shall be shown on the analog chart of the sounding device. All soundings shall be acquired on a continuous basis with plotting of data based on the scale and size of the plot.

##### 1.11.3.3 Spacing, Coverage, and Datum

Surveyed points, including easting, northing, and elevation for each point, shall be collected along cross section lines with spacing not to exceed 200 feet. Spacing between points along the cross section lines shall not exceed 3 feet nor be less than 0.3 feet for hydrographic surveys. Spacing between points along the cross section lines for topographic surveys shall not exceed 10 feet and shall include points at each sharp change in slope. The easting and northing values shall be relative to the State Plane Coordinate System, Mississippi East zone, NAD 1983 in U.S. survey feet.

Elevations shall be relative to feet NAVD88, GEOID 12a. Each survey line shall extend a minimum of 500 feet beyond the limits shown on the contract drawings for the borrow areas. For the fill placement sites along East Ship Island and the tip of West Ship Island, the survey limits shall extend cross-shore from the 8 foot NAVD88 contour along the existing islands seaward to -20 foot NAVD88 contour in the Gulf of Mexico. Along the beach segment previously known as Camille Cut (i.e., the area between East Ship and West Ship Islands), fill surveys shall extend from the -15 foot NAVD88 contour on the Mississippi Sound south to the -20 foot NAVD88 contour in the Gulf of Mexico, except within the submerged aquatic vegetation (SAV) areas. All survey data shall be referenced to Government or Contractor furnished monuments. RTK base stations transmitting kinematic GPS correctors will be provided by the Government for the fill template. The Contractor shall be responsible providing, installing, maintaining, and using their own RTK base stations for the borrow areas/dredging operation. The Government will provide the staff gage and monument locations on an abandoned Air Force tower located at Latitude 30.1586448 degrees and Longitude -88.366657 degrees.

#### 1.11.3.4 Survey Data Submittal Requirements

The Contractor shall submit all pre- and post-construction plan view and cross-section plots of the borrow areas and beach fill acceptance sections, along with a breakdown of quantities removed from and placed at the respective locations. If the Contractor is utilizing HYPACK to perform required surveys, the Contractor shall submit the HYPACK project files for the specific survey performed. These files contain all the files that make up the survey including raw and edited data, line files, tide files, velocity files, etc. associated with each survey. Otherwise, the Contractor shall utilize a system capable of acquiring or converting all, unedited raw data (horizontal and vertical) to an ASCII compatible format prior to submittal to the Government. All records shall conform to the format shown below.

East	North	Elevation	Date	Time
123456.78	876543.21	-42.3	10/15/91	14:22:13.3

Data acquired by the Contractor for each borrow area and beach fill survey shall be furnished to the Government on computer disks in the form of CADD drawing files in Microstation format and additionally in ASCII XYZ format digital files. Each digital XYZ file shall be accompanied with information stating the surveyor's name, collection date, horizontal datum and units, and vertical datum and units of the survey, and all other field notes.

The contractor shall provide a metadata file compliant with the latest version of the Federal Geographic Data Committee (FGDC) Standards/ ISO 19115. The metadata file shall contain methods, procedures, control information, datum, and other data necessary to properly describe the origin of the data.

In addition to the above requirements, the Contractor shall compute fill volumes for the contract typical sections based on the pre-construction and post-construction surveys as described herein below. The Contractor shall also compute fill volumes for construction template with a +0.5 foot vertical tolerance and a -0.5 foot vertical tolerance. For the borrow areas the contractor shall compute the required dredge and allowable dredge volumes based on pre-construction and post-construction surveys utilizing the borrow area dredge prism shown on the contract drawings and the average-end area method. The required dredge volume is defined as the

volume of material within the limits and depths of the borrow areas shown on sheets CB-112 through CB-116 of the contract drawings. The allowable dredge volume is defined as the volume within the allowable overdepth prism (i.e., 2 feet of material below the required dredge volume prism) as shown on sheets CB-306 through CB-320 of the contract drawings. Paper plots of the profiles along with digital records of the surveys and computations shall be furnished to the Government.

#### 1.11.3.5 Pre-construction Surveys

The Contractor shall perform pre-construction surveys of the beach fill location no more than 21 calendar days and no less than 14 calendar days in advance of the beach fill operations for a given beach fill acceptance section. In addition the Contractor shall perform pre-construction surveys of each borrow area no more than 60 calendar days and no less than 14 calendar days in advance of borrow area excavation. Such surveys shall be scheduled so that field notes and computations (to include all required deliverables) can be furnished to the Contracting Officer or his/her designated Representatives a minimum of 7 calendar days in advance of the initiation of dredging and placement of fill so that control of quantities and adjustments to the fill placement may be made if necessary. The Contractor shall submit the pre-construction surveys in accordance with paragraph Survey Data Submittal Requirements. Based off the findings of the pre-construction surveys, the contractor shall layout the proposed operational plan for the borrow area(s) and beach fill site per acceptance section. This plan shall be submitted to the Contracting Officer's Representative no less than 7 calendar days prior to the start of work in that section. The Contractor shall use the same baseline as shown in the contract drawings.

#### 1.11.3.6 Acceptance Surveys

(a) Beach Fill: The Contractor shall perform an acceptance survey(s) of the beach fill location as soon as possible and no more than 7 calendar days after beach fill placement has been completed for that acceptance section. Acceptance sections shall be 200 feet unless otherwise approved by the Contracting Officer's Representative. The Contractor shall use the same stations that were used in the preconstruction surveys.

(b) Borrow Area(s): The Contractor shall conduct a post construction survey of the borrow area following the completion of dredging within a specified borrow area. Such surveys shall be scheduled so that field notes and computations (to include all required deliverables) can be furnished to the Contracting Officer or his/her designated Representatives a maximum of 10 working days after dredging as part of this contract is complete. The Contractor shall use the same stations that were used in the preconstruction surveys.

The Contractor shall submit the acceptance surveys in accordance with paragraph Survey Data Submittal Requirements.

#### 1.11.3.7 Post-construction Surveys

The Contractor shall perform a post-construction survey of the entire beach fill location and borrow areas upon completion of contract and/or prior to any additional construction phase beginning in accordance with paragraph Survey Data Submittal Requirements. Any areas of mechanical damage or



sedimentation shall be noted in the report and in the As-Built drawings.

#### 1.12 Construction Access and Buoy/Signage Requirements

Construction access corridors are shown on sheet CB-111 of the contract drawings. If necessary, the Contractor can construct access channels, drive piles, install bulkheads, etc. within the corridors to ensure efficient access to the islands. However, all excavation and disposal of removed material for access channels must be contained within the corridor footprint and above elevation -12 feet NAVD88. Additionally, access channels "A" and "C", including the side slopes, shall have a minimum 50 foot offset from the mean lower low water elevation (-0.32 feet NAVD88) of the western most tip of what was previously East Ship Island (near STA 65+00) and the eastern most tip of what was previously West Ship Island (near STA 185+00). The backfilling of excavated areas for access is not required upon completion of work for this contract.

Due to the dynamic nature of the project area, the final limits of access corridors shall be field-verified by the Contractor and approved by the Contracting Officer, in coordination with the National Park Service (NPS), prior to commencement of construction. If excavation is necessary for access and the material is disposed within the access corridors, the Contractor shall install regulatory hazard buoys in the water to mark the disposal mounds. The buoys shall be marked with standard orange hazard diamond symbol and include a flashing white light. They shall remain in-place until the completion of the project. If the buoys are displaced for any reason, the Contractor shall replace them at no additional cost to the Government. The Contractor shall also install signage along the shoreline at the approximate mean high water line on both sides of the excavations (no more than 100 feet from the excavation limits) to identify the change in ground elevation below the water. The details of the Contractor's access and buoy/signage plans shall be submitted to the Contracting Officer for approval prior to the commencement of work. Further details on the required buoys and signs are provided below (see attached Figures 5E and 5F).

##### 1.12.1 Regulatory Hazard Buoy Specifications

###### 1.12.1.1 Buoy

Color: White with orange markings

Size: At least 36 inches above the water surface

Anchor: Sufficiently anchored to withstand expected weather and water conditions without being displaced

Distance Apart: No more than 500 feet, no less than 100 feet

Distance from Hazard: At least 100 feet, no more than 1,000 feet

Shape: Spherical

###### 1.12.1.2 Daymark

Color: Orange on white background

Size: At least 36 inches

Visibility: 1440 feet (Based on U.S. Coast Guard minimum standard symbol size)

1.12.1.3 Light

Color: White

Placement: Top of Buoy

Rhythm: Flashing (non-specific)

1.13 PERFORMANCE EVALUATION OF CONTRACTOR

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 the contract performance when determined to be in the best interest of the Government.

The evaluation will be completed in the Contractor Performance Assessment Reporting System (CPARS), and the Contractor will be rated either exceptional, very good, satisfactory, marginal, or unsatisfactory in the areas of Quality, Schedule, Cost Control, Management, Small Business, Regulatory, and Other Areas. 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 records. 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).

1.14 RATES OF WAGES

Pages of Wage Rates are attached at the end of this section.

1.15 SAFETY PERSONNEL

The Contractor shall have a dedicated safety and flag person on site at all times, whose sole responsibility is preventing the public from entering the work area. Additionally, the Contractor shall place a safety person at the discharge end of the disposal pipeline. The safety person shall be present at all times during discharge operations and will maintain radio communication between the dredge and the disposal operation.


PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION (NOT APPLICABLE)

-- End of Section --

The graphic format for this 4'x 6' sign panel follows the legend guidelines and layout as specified below. The large 4'x 4' section of panel on the right is to be white with black legend. The 2'x 4' section of the sign on the left with the full Corps signature (reverse version) is to be screen printed Communications Red on the White background.

This sign is to be placed with the Safety Performance Sign (See Fig. 5d).

3"	21"	3"	42"	3"
4.5"	<p>Design and Construction Supervised by</p>  <p><b>US Army Corps of Engineers</b> South Atlantic Division Mobile District</p>	<h1>Name of Project</h1> <p>Location: City and State</p>  <p>Design By: US Army Corps of Engineers Mobile District</p> <p>Contractor: Name City and State</p>	6"	
2"			4.5"	
6.25"			4.5"	
10.5"			6"	
2.5"			2.25"	
2"			9.5"	
			1.875"	
			1.875"	
	1.875"			
	1.875"			
	7.75"			
3"	21"	1"	21"	3"

Legend Group 1: One to two-line description of Corps relationship to project  
Color: White  
Typeface: 1.25" Helvetica Regular  
Maximum line length: 19"

Legend Group 2: Division\ District Name Placed below 10.5" Reverse Signature (6" Castle).  
Color: White  
Typeface: 1.25" Helvetica Regular

Legend Group 3: One- to three-line project title legend describes the work being done under this contract.  
Color: Black  
Typeface: 3" Helvetica Bold  
Maximum line length: 42"

Legend Group 4: One- to two-line identification of project or facility (civil works) or name of sponsoring department (military).  
Color: Black  
Typeface: 1.5" Helvetica Regular  
Maximum line length: 42"

Cross-align the first line of Legend Group 4 with the first line of the Corps Signature (US Army Corps) as shown.

Legend Groups 5a-b: One- to five-line identification of prime contractors including: type (architect, general contractor, etc.), corporate or firm name, city, state. Use of Legend Group 5 is optional.  
Color: Black  
Typeface: 1.25" Helvetica Regular  
Maximum line length: 21"

All typography is flush left and rag right, upper and lower case with initial capitals only as shown. Letter- and word-spacing to follow Corps standards

Sign Type	Legend Size	Panel Size	Post Size	Specification Code	Mounting Height	Color Bkg/Lgd
CID-01	Various	4' x 6'	4" x 4"	HDO-3	48"	WH-RD/BK

## CONSTRUCTION SIGN (CORPS OF ENGINEERS DESIGN)

(Use with Fig 5c)

Fig. 5b

All Construction Project Identification signs and Safety Performance signs are to be fabricated and installed as described below. The signs are to be erected at a location designated by the contracting officer and shall conform to size, format, and typographic standards.

The sign panels are to be fabricated from .75" High Density Overlay Plywood.

Sign graphics to be prepared on a white non-reflective vinyl film with positionable adhesive backing.

All graphics except for the Communications Red background with Corps signature on the project sign are to die-cut or computer cut nonreflective vinyl, pre-spaced legends prepared in the sizes and typefaces specified and applied to the background panel following the graphic formats shown.

The 2' x 4' Communications Red panel (to match PMS-032) with full Corps signature (reverse version) is to be screen printed on the white background identification of the District / Division may be applied under the signature with white cut vinyl letters prepared to Corps standards

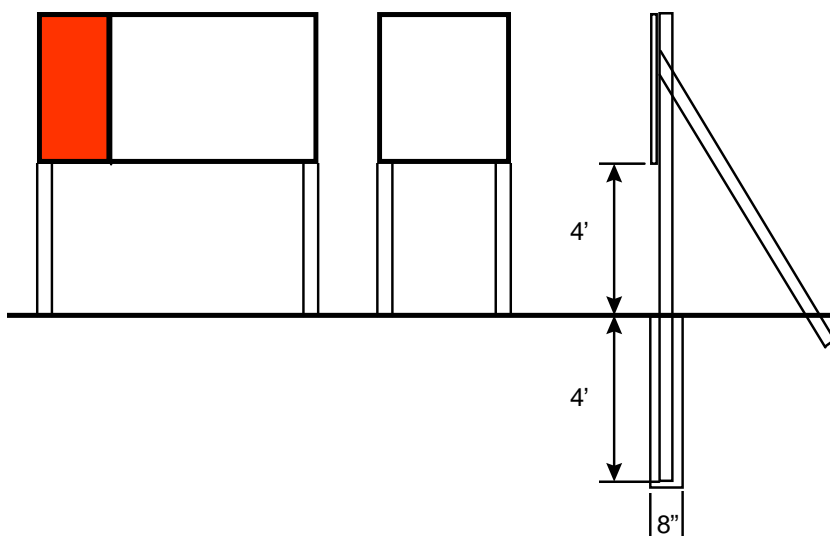
Drill and insert six (6) .375 T-nuts from the front face of the HDO sign panel. Position holes as shown. Flange of T-nut to be flush with sign face

Apply Graphic panel to prepared HDO plywood panel following manufactures instructions

Sign uprights to be structural grade 4" x 4" treated Douglas Fur or Southern Yellow Pine. No 1 or better. Post to be 12' long Drill six (6) .375" mounting holes in uprights to align with T-nuts in sign panel. Countersink (5") back of hole to accept socket head cap screw ( 4" x .375" ).

Assemble sign panel and uprights. Imbed assembled sign panel and uprights in 4' hole. Local soil conditions and/or wind loading may require bolting additional 2" x 4" structs on inside face of uprights to reinforce installation shown.

Shown below the mounting diagram is a panel layout grid with spaces provided for project information. Photocopy this page and use as a worksheet when preparing sign Legend orders.



#### Construction Project Sign Legend Group 1

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 2 Division/District Names

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 3 Project Title

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

#### Legend Group 4 Facility Name

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 5a: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

#### Legend Group 5b: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

#### Safety Performance Sign Legend Group 1: Project Title

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 2: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

Each contractor's safety record is to be posted on Corps managed or supervised construction projects and mounted with the construction project identification sign.

The graphic format, color, size and type-faces used on the sign are to be reproduced exactly as specified below. The title with First Aid logo in the top section of the sign and the performance record captions are

standard for all signs of the type. Legend Groups 2 and 3 below identify the project and the contractor and are to be placed on the sign as shown.

Safety record numbers are mounted on individual metal plates and are screw-mounted to the background to allow for daily revisions to posted safety performance record.

Legend Group 1: Standard two-line title "Safety is a Job requirement" with (8 od.) Safety Green First Aid logo.  
Color: to match PMS 347  
Typeface: 3" Helvetica Bold  
Color: Black

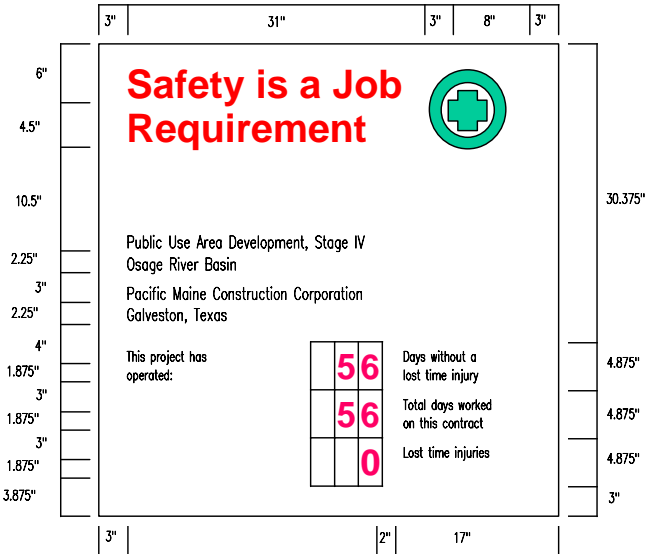
Legend Group 2: One to two-line project title legend describes the work being done under this contract and name of host project.  
Color: Black  
Typeface: 1.5" Helvetica Regular  
Maximum line length: 42"

Legend Group 3: One to two-line identification: name of prime contractor and city, state address.  
Color: Black  
Typeface: 1.5" Helvetica Regular  
Maximum line length: 42"

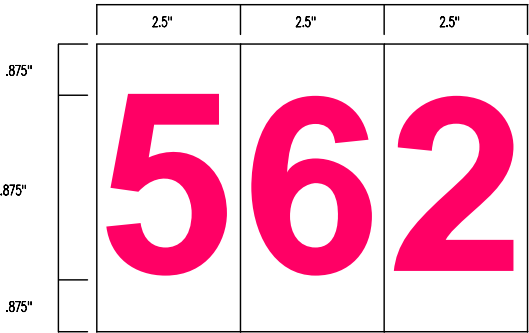
Legend Group 4: Standard safety record captions as shown.  
Color: Black  
Typeface: 12.5" Helvetica Regular

Replaceable numbers are to be mounted on white .060 aluminum plates and screw-mounted to background.  
Color: Black  
Typeface: 3" Helvetica Regular  
Plate size: 2.5" x .5"

All typography is flush left and rag right. Upper and lower case with initial capitals only as shown. Letter- and word-spacing to follow Corps standards.

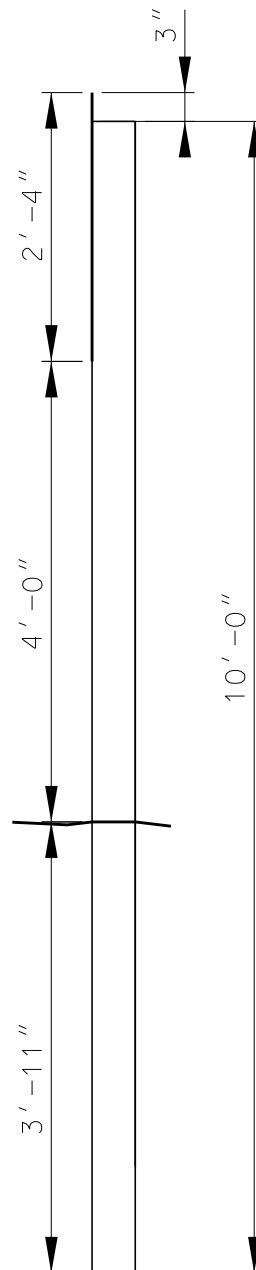
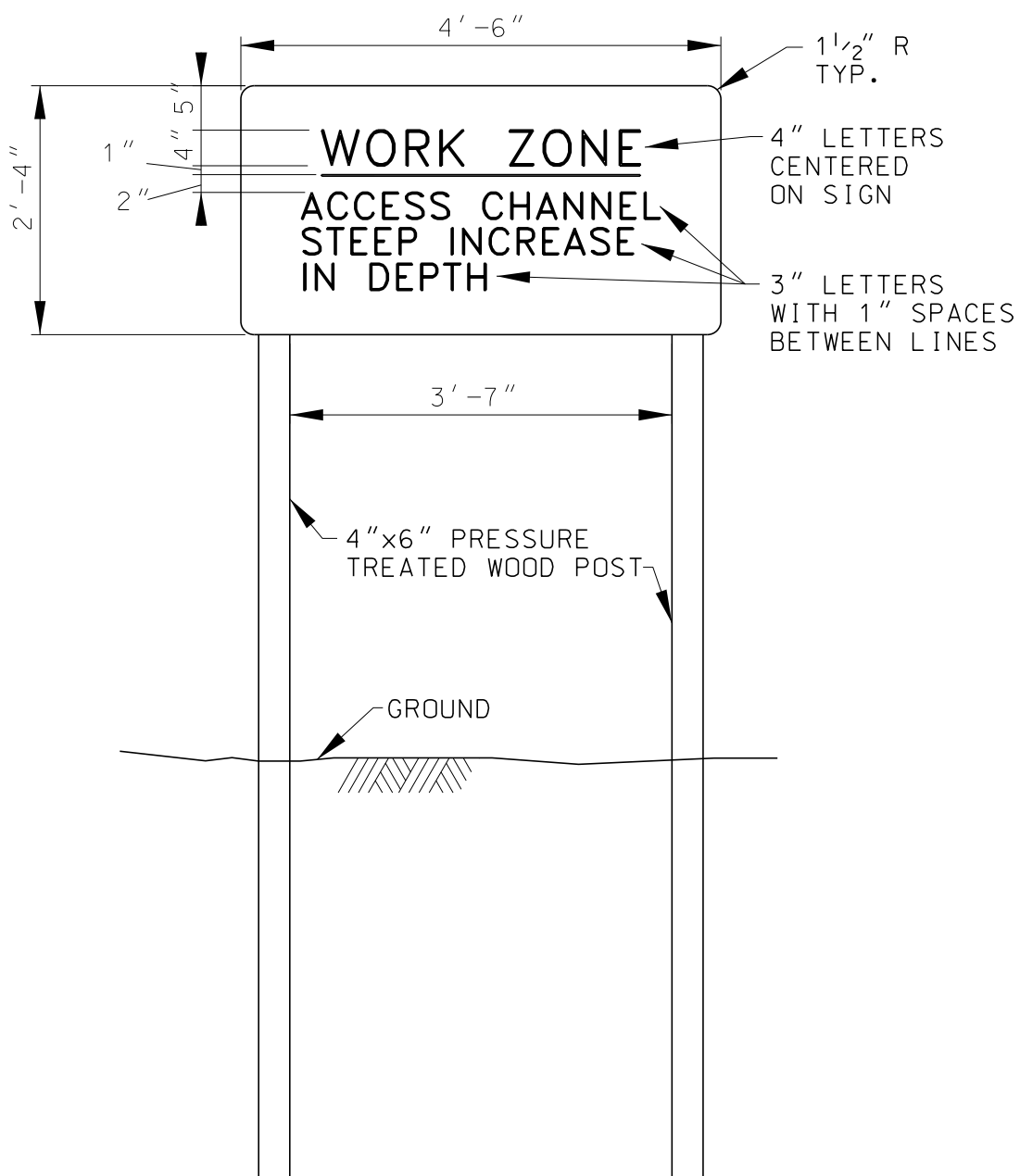


Sign Type	Legend Size	Panel Size	Post Size	Specification Code	Mounting Height	Color Bkg/Lgd
CID-02	various	4"x4"	4"x4"	HDO-3	48"	WH/BK-GR



SAFETY PERFORMANCE SIGN

Fig. 5d



#### COLORS

LETTERS - WHITE  
BACKGROUND - RED

#### ACCESS CHANNEL SIGN AND POST DETAIL NOT TO SCALE

NOTE:

ALL SIGNS SHALL BE ALUMINUM

FIGURE 5E

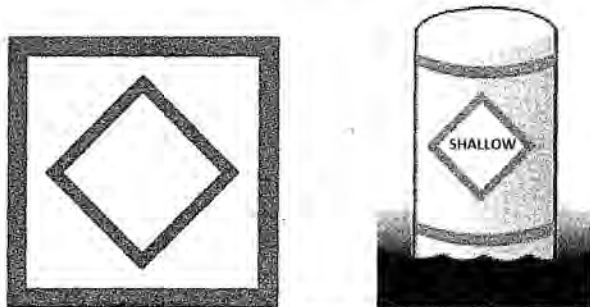
## Buoy Markers for Below the Surface Water Hazard

### 1. Bouy

- a. Color: white with orange markings
- b. Size: at least 36 inches above water surface
- c. Anchor: sufficiently anchored to withstand expected weather and water conditions without being displaced
- d. Distance apart: no more than 500 feet, no less than 100 feet
- e. Distance from hazard: at least 100 feet, no more than 1000 feet
- f. Shape: spherical

### 2. Daymark

- a. Color: Orange on white background
- b. Size: at least 36 inches
- c. Visibility: 1440 feet (Based on USCG minimum standard symbol size)



This daymark conveys the message:

"Warning, there are dangerous boating conditions." The nature of the danger may be indicated inside the diamond shape, such as rock, dam or dam ahead, etc.

### 3. Light

- a. Color: white
- b. Placement: top of buoy
- c. Rhythm: Flashing (non-specific)

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General Decision Number: MS190003 01/04/2019 MS3

Superseded General Decision Number: MS20180003

State: Mississippi

Construction Type: Heavy Dredging

Counties: Mississippi Statewide.

DREDGING PROJECTS ALONG THE MISSISSIPPI RIVER AND ITS  
TRIBUTARIES

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

\* SUMS1990-015 02/15/1990

	Rates	Fringes
Derrick Operator.....	\$ 7.25	
Dozer Operator.....	\$ 7.25	
Dredge 16" and Over		
Deckhand.....	\$ 7.25	
Dredge tender operator.....	\$ 7.25	
Fireman.....	\$ 7.25	
First assistant engineer....	\$ 7.25	
Leverman.....	\$ 7.25	

Oiler.....	\$ 7.25
Second assistant engineer...	\$ 7.25
Shoreman.....	\$ 7.25
Third assistant engineer....	\$ 7.25
Truck driver.....	\$ 7.25
Welder.....	\$ 7.25

## Dredge Under 16"

Deckhand.....	\$ 7.25
Dredge tender operator.....	\$ 7.25
Leverman.....	\$ 7.25
Oiler.....	\$ 7.25
Welder.....	\$ 7.25

## Hydraulic Dredging

First cook.....	\$ 7.25
Handyman.....	\$ 7.25
Janitor, cabin person.....	\$ 7.25
Second cook.....	\$ 7.25

## Marsh Buggy Dragline

Oiler.....	\$ 7.25
Operator.....	\$ 7.25

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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 (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage

determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
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On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
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The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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General Decision Number: MS190001 01/04/2019 MS1

Superseded General Decision Number: MS20180001

State: Mississippi

Construction Type: Heavy Flood Control

Counties: Mississippi Statewide.

\*RIVER, HARBOR AND FLOOD CONTROL PROJECTS FOR CONSTRUCTION OF ALL RIVER, HARBOR AND FLOOD CONTROL WORK ON THE MISSISSIPPI RIVER AND TRIBUTARIES -(EXCLUDING ANY CONTRACTS FOR ANY PHASE OF CONSTRUCTION OF A LOCK AND DAM) MISSISSIPPI - EXCEPT THE METROPOLITAN AREAS OF GREENVILLE, NATCHEZ AND VICKSBURG

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

\* SUMS1991-004 12/18/1991

	Rates	Fringes
CARPENTER.....	\$ 7.25	
Laborers:		
AIR TOOL OPERATOR.....	\$ 7.25	
CHAIN SAW OPERATOR OR FILER.	\$ 7.25	
REVETMENT & DIKES.....	\$ 7.25	
UNSKILLED.....	\$ 7.25	

## Power equipment operators:

ASPHALT PLANT DRYER OPERATOR, ASPHALT DISTRIBUTOR, ASPHALT ROLLER, BULLDOZER (ROUGH, INCLUDING DISC, PLOW, OR ROLLER), MOTOR PATROL (HAUL ROADS), TRENCHING MACHINE (18" & UNDER), SELF-PROPELLED ROLLER (EXCEPT ASPHALT, END DUMP EQUIPMENT (OFF HIGHWAY), MIXER (CONCRETE UP TO 21 CU. FT.), BOTTOM DUMP EUCLIDS (& LIKE EQUIPMENT)...	\$ 7.25	.05
BULLDOZER (FINISHER, PUSH CAT & ON BARGES), MOTOR PATROL FINISHER, SCRAPER & LIKE EQUIPMENT, FRONT END LOADER, BACKHOE (TRACTOR MOUNTED) ASPHALT FINISHER OR SPREADING MACHINE, WELL POINT SYSTEM OPERATOR, SELF PROPELLED LOADER (CONVEYOR TYPE).....	\$ 7.25	.05
FIREMAN (HEAVY CONSTRUCTION), PILEDRIVER, LEADSMAN, WINCHMAN.....	\$ 7.25	.05
OILER, PUMP, GREASER, TRACTOR (FARM TYPE INCLUDING DISC, PLOW OR ROLLER).....	\$ 7.25	.05
PILEDRIVER OPERTOR, MECHANIC (HEAVY EQUIPMENT), CRANES, DERRICKS, DRAGLINES, WELDER, POWER SHOVELS & BACKHOES, MIXER (CONCRETE, 21 CU. FT. & OVER), ASPHALT PLANT OPERATOR, TRENCHING MACHINE (OVER 18").....	\$ 7.75	.05

## Truck drivers:

1 1/2 TONS OR LESS.....	\$ 7.25
OVER 1 1/2 TONS.....	\$ 7.25

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours



they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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 (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

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Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average

calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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Wage and Hour Division  
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Washington, DC 20210

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END OF GENERAL DECISION

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General Decision Number: MS190060 01/04/2019 MS60

Superseded General Decision Number: MS20180155

State: Mississippi

Construction Type: Heavy  
HEAVY CONSTRUCTION PROJECTS

County: Harrison County in Mississippi.

HEAVY CONSTRUCTION PROJECTS EXCLUDING FLOOD CONTROL

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

SUMS2015-025 04/03/2017

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 17.52	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 17.75	0.00
ELECTRICIAN.....	\$ 27.16	7.45
IRONWORKER, REINFORCING.....	\$ 20.63	0.00
IRONWORKER, STRUCTURAL.....	\$ 19.00	0.00

LABORER: Common or General, Includes Water Sewer Lines.....	\$ 12.41	0.00
LABORER: Pipelayer, Includes Water Sewer Lines.....	\$ 14.04	1.92
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 18.86	0.00
OPERATOR: Bulldozer.....	\$ 18.85	1.18
OPERATOR: Crane.....	\$ 22.66	4.66
TRUCK DRIVER: Dump Truck, Includes Water Sewer Lines.....	\$ 16.03	0.95

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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 (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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END OF GENERAL DECISION



General Decision Number: MS190002 01/04/2019 MS2

Superseded General Decision Number: MS20180002

State: Mississippi

Construction Types: Heavy Dredging

Counties: Mississippi Statewide.

SELF PROPELLED HOPPER DREDGING

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

SUMS1991-005 09/01/1991

	Rates	Fringes
Self-Propelled Hopper		
Dredge, Drag Tender.....	\$ 9.70	3.45+a

FOOTNOTE: Fourteen days paid vacation and eight paid holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Days, Thanksgiving Day, & Christmas day provided that employee has had one year or more of service.

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WELDERS - Receive rate prescribed for craft performing

operation to which welding is incidental.

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=====  
END OF GENERAL DECISION

## **Section 01 00 01**

### **General Contract Requirements**

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## **1. BOARD OF CONTRACT APPEALS**

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, Skyline Six, 5109 Leesburg Pike, 7TH Floor, Falls Church, Virginia 22041.#

End of Paragraph

## **2. REQUESTS FOR INFORMATION**

Any questions about this solicitation, including technical questions about plans and specifications, shall be submitted via the Bidder Inquiry Portal in ProjNet at <https://www.projnet.org>. To submit and review inquiry items, prospective vendors will need to use the Bidder Inquiry Key presented below and follow the instructions listed below the key for access. A prospective vendor who submits a comment /question will receive an acknowledgement of their comment/question via email, followed by an answer to the comment/question after it has been processed by our technical team. All timely questions and approved answers will be made available through ProjNet.

Questions shall be submitted no later than 5 AUG 2019 at 2:00 p.m. Central Time to allow time for a response, and amendment to the solicitation if necessary. On this date and time the portal will be closed.

For technical questions, no other means of communication, e-mail, fax, or telephone will be accepted. Oral exchanges between Offerors or Bidders and the government prior to award of the contract will not be binding. In addition to information available to Offerors or Bidders on the Bidder Inquiry Portal, any information concerning this solicitation will be furnished to all Offerors or Bidders as an amendment to the solicitation if the information is necessary to the submittal of offers or bids.

The Solicitation Number is:W9127819B0004

The Bidder Inquiry Key is: TRFW23-J59JXE

Specific Instructions for ProjNet Bid Inquiry Access:

1. From the ProjNet home page linked above, click on Quick Add on the upper right side of the screen.
2. Identify the Agency. This should be marked as USACE.
3. Key. Enter the Bidder Inquiry Key listed above.
4. Email. Enter the email address you would like to use for communication.
5. Click Continue. A page will then open saying that a user account was not found and will ask you to create one using the provided form.
6. Enter your First Name, Last Name, Company, City, State, Phone, Email, Secret Question, Secret Answer, and Time Zone. Make sure to remember your Secret Question and Answer as they will be used from this point on to access the ProjNet system.
7. Click Add User. Once this is completed you are now registered within ProjNet and are currently logged into the system.

Specific Instructions for Future ProjNet Bid Inquiry Access:

1. For future access to ProjNet, you will not be emailed any type of password. You will utilize your Secret Question and Secret Answer to log in.
2. From the ProjNet home page linked above, click on Quick Add on the upper right side of the screen.
3. Identify the Agency. This should be marked as USACE.
4. Key. Enter the Bidder Inquiry Key listed above.
5. Email. Enter the email address you used to register previously in ProjNet.
6. Click Continue. A page will then open asking you to enter the answer to your Secret Question.
7. Enter your Secret Answer and click Login. Once this is completed you are now logged into the system.

Offerors or Bidders are requested to review the solicitation and amendments in their entirety, as well as to review the Bidder Inquiry Portal for previous questions and responses, prior to submission of a new inquiry on the Portal.

**CAUTION: ANY INQUIRY SUBMITTED AND ANSWERED WITHIN THIS SYSTEM, WILL BE ACCESSIBLE TO VIEW BY ALL INTERESTED OFFERORS OR BIDDERS ON THIS SOLICITATION.**

The call center for the ProjNet operates weekdays from 8 AM to 5 PM U.S. Central Time Zone. The telephone number is 1-800-428-HELP.

End of Paragraph

### **3. DESCRIPTION OF WORK**

The work shall consist of the placement of approximately 2.3 million cubic yards of sand along the southern shoreline of the eastern end of Ship Island (Phase 3) and approximately 1.2 million cubic yards of sand along the northern shoreline of Ship Island in the area formerly known as Camille Cut (Phase 4).

NOTE: The above general outline of features of the work does not in any way limit the responsibility of the Contractor to perform all work and furnish all plant, labor, equipment and materials required by the specifications and the drawings referred to therein. The cost of this work is estimated to be between \$25,000,000.00 and \$100,000,000.00.

End of Paragraph

### **4. PREAWARD INFORMATION**

Each bidder shall furnish either with his bid or within 3 days after a request is made for submittal of pre-award data a statement of whether he is now or ever has been engaged in any work similar to that covered by the specifications herein, the dollar value thereof, the year in which such work was performed, and the manner of its execution, and giving such other information as will tend to show the bidder's ability to prosecute the required work. The "such other information" referred to above shall include but is not limited to the following:

- a. The name and address of the office or firm under which such similar work was performed. Include names and telephone numbers of personnel within each organization who are familiar with the prospective contractor's performance.
- 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 statements 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. Include names and telephone numbers of personnel within each organization who are familiar with the prospective contractor's performance.
- e. If the bid exceeds \$1,000,000 and the prospective contractor is a large business concern, he must submit a subcontracting plan in compliance with the Contract Clause entitled SMALL BUSINESS SUBCONTRACTING PLAN.

End of Paragraph

## **5. CONTRACT PRICES - BIDDING SCHEDULE**

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, materials and bonds (performance and payment), 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.

End of Paragraph

## **6. REQUIRED INSURANCE**

The Contractor shall procure and maintain during the entire period of his performance under this contract, the following minimum insurance in accordance with the Contract Clause entitled "Insurance-Work on a Government Installation." Workmen's Compensation and Employers' liability Insurance:

Workmen's Compensation and Occupational Disease Coverage in accordance with statutory limits. Employers' Liability Coverage with a minimum limit of \$100,000.

Comprehensive Automobile Liability Insurance:

Bodily injury coverage with minimum limits of \$200,000 per person and \$500,000 per occurrence, property Damage Coverage with a minimum limit of \$20,000 per occurrence.

Comprehensive General Liability Insurance:

Bodily injury coverage with minimum limits of \$500,000 per occurrence.

End of Paragraph

## **7. EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE**

- a. This clause does not apply to terminations.
- b. Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region III. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.
- c. Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.
- d. When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, "Contract Pricing Proposal Cover Sheet."

End of Paragraph

## **8. U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385- 1-1**

This paragraph applies to contracts and purchase orders that require the contractor to comply with EM 385-1-1 (e.g., contracts that include the Accident Prevention clause at FAR 52.236-13 and/or other safety provisions). EM 385-1-1 and its changes are available at <http://www.usace.army.mil/Safety-and-Occupational-Health/EM-385-1-1->

2008-Being-Revised/. The Contractor shall be responsible for complying with the current edition and all changes posted on the web through the date that is 10 calendar days prior to the date offers are due. If the solicitation is amended to extend the time set for receipt of offers, the 10 calendar days rule stated above shall be applied against the amended date. (For example, if offers are due on 10 April, all changes posted on or before 31 March shall apply to the contract. If the time for receipt of offers is extended from 10 April to 20 April, all changes posted on or before 10 April shall apply to the contract.)

End of Paragraph

## **9. AFFILIATED BIDDERS**

(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.

Please check when applicable:

\_\_\_\_\_ The offeror certifies that it has no affiliates.

\_\_\_\_\_ The offeror certifies that it is affiliated with the concerns designated on an attached affidavit.

End of Paragraph

## **10. MANPOWER REPORTING (DEC 2012)**

The Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs) operates and maintains a secure Army data collection site where the contractor will report ALL contractor manpower (including subcontractor manpower) required for performance of this contract. The contractor is required to completely fill in all the information in the format using the following web address "<https://cmra.army.mil>". The required information includes:

(1) Contracting Office, Contracting Officer, Contracting Officer's Technical Representative;

- (2) Contract number, including task and delivery order number;
  - (3) Beginning and ending dates covered by reporting period;
  - (4) Contractor name, address, phone number, e-mail address, identity of contractor employee entering data;
  - (5) Estimated direct labor hours (including subcontractors);
  - (6) Estimated direct labor dollars paid this reporting period (including subcontractors);
  - (7) Total payments (including subcontractors);
  - (8) Predominant Federal Service Code (FSC) reflecting services provided by contractor (and separate predominant FSC for each subcontractor if different);
  - (9) Estimated data collection cost;
  - (10) Organizational title associated with the Unit Identification Code (UIC) for the Army Requiring Activity (the Army Requiring Activity is responsible for providing the contractor with its UIC for the purposes of reporting this information);
- Note: UIC for Mobile District Civil Works funded projects is W2SR04 and Military funded projects is W07404. If you are unsure of the funding type, contact your COR or Contract Specialist.
- (11) Locations where contractor and subcontractors perform the work (specified by zip code in the United States and nearest city, country, when in an overseas location, using standardized nomenclature provided on website);
  - (12) Presence of deployment or contingency contract language; and
  - (13) Number of contractor and subcontractor employees deployed in theater this reporting period (by country).

As part of its submission, the contractor will also provide the estimated total cost (if any) incurred to comply with this reporting requirement. Reporting period will be the period of performance not to exceed 12 months ending September 30 of each government fiscal year and must be reported by 31 October of each calendar year. Contractors may use a direct XML data transfer to the database server or fill in the fields on the website. The XML direct transfer is a format for transferring files from a contractor's systems to the secure web site without the need for separate data entries for each required data element at the web site. The specific formats for the XML direct transfer may be downloaded from the web site.

End of Paragraph

## **11. MANUALS AND PUBLICATIONS**

Engineering manuals and Concrete Research Division Publications may be obtained from the addresses given below.

Engineering Manuals:

U. S. Army, Corps of Engineers

Publications Depot

2803 -52nd Avenue

Hyattsville, MD 20781-1102

Concrete Research Division Publications:

U.S. Army Engineer Waterways Experiment Station

ATTN: Publications Distribution Unit

P.O. Box 631

Vicksburg, MS 39180

End of Paragraph

## **12. BULLETIN BOARD**

Immediately upon beginning of work under this contract, the Contractor shall provide at the job site a weatherproof glass-covered bulletin board for displaying the fair employment poster, wage rates, and safety bulletins and posters. Emergency telephone numbers and reporting instructions for ambulance, physician, hospital, fire and police shall be posted. The bulletin board shall be located in a conspicuous place easily accessible to all and legible copies of the aforementioned data shall be displayed until work under the contract is completed. No direct payment will be made for the bulletin board.

End of Paragraph

## **13. LABOR REPORTS**

The Contractor shall promptly furnish and shall cause any subcontractors to furnish in like manner within 7 days after the regular payment date of each weekly payroll to the Contracting Officer, a copy of such payroll together with a statement of compliance with respect to the wages paid each of its employees (which shall not be deemed to apply to persons in classifications higher than laborers and mechanics and those who are the

immediate supervisors of such employees) engaged on the work. If the Contractor or any of his subcontractors fail to furnish copies of such payrolls, the Contracting Officer may disapprove all or part of any progress payment estimate for the period covered by such payrolls until they are received by him. The Contractor shall also prepare and furnish such labor reports as may be required by the Department of Labor.

End of Paragraph

#### **14. PROTECTION OF MATERIAL AND WORK**

The Contractor shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be Government-furnished or owned) and all work performed. All reasonable requests of the Contracting Officer to enclose or specially protect such property shall be complied with. If, as determined by the Contracting Officer, material, equipment, supplies, and work performed are not adequately protected by the Contractor such property may be protected by the Government and the cost thereof may be charged to the Contractor or deducted from any payments due him.

End of Paragraph

#### **15. ENGLISH-SPEAKING REPRESENTATIVE**

At all times when any performance of the work at any site is being conducted by any employee of the Contractor or his subcontractors, the Contractor shall have a representative present at each site who has the capability of receiving instructions in the English language, fluently speaking the English language and explaining the work operations to persons performing the work in the language that those performing the work are capable of understanding. The Contracting Officer shall have the right to determine whether the proposed representative has sufficient technical and bilingual capabilities, and the Contractor shall immediately replace any individual not acceptable to the Contracting Officer.

#### **16. PROHIBITION AGAINST CONTRACTING WITH INDIVIDUALS OR ENTITIES DESIGNATED AS SIGNIFICANT NARCOTICS TRAFFICKERS**

Pursuant to Executive Order 12978 entitled "Blocking Assets and Prohibiting Transactions with Significant Narcotic Traffickers" dated October 21, 1995, the offeror certifies that it has not and will not be involved in business transactions with individuals or business entities designated as significant narcotics traffickers under this Executive Order. For a current listing of specially designated nationals and blocked persons,

contact the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; telephone 202/622-2420.

End of Paragraph

## **17. CONTRACTOR PAYMENT REQUEST**

A copy of CESAM Form 1151 entitled PROMPT PAYMENT CERTIFICATION AND SUPPORTING DATA FOR CONTRACTOR PROGRESS PAYMENT INVOICE is included hereinafter, with instructions, following the Wage Rates. This form will be used in conjunction with the CONTRACT CLAUSE entitled PAYMENTS UNDER FIXEDPRICE CONSTRUCTION CONTRACTS. The contracting Officer will provide copies of the form to the Contractor upon request. The Contractor shall complete the form, sign the certification and submit it with each progress payment invoice.

End of Paragraph

## **18. PARTNERING**

In order to most effectively accomplish this contract, the Government proposes to form a cohesive partnership with the Contractor and its subcontractors. This partnership would strive to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget and on schedule. This partnership would be bilateral in make-up and participation will be totally voluntary. Any cost associated with implementing this partnership will be agreed to by both parties and will be shared equally with no change in contract price.

End of Paragraph

## **19. POTABLE WATER**

Testing of all potable water storage facilities and dispensing systems with a storage capacity of ten or more gallons, will be conducted by an independent testing laboratory approved by the Contracting officer as follows:

- (1) Prior to the commencement of work.
- (2) Minimum of monthly, after start of work for the duration of the contract.
- (3) After any repairs or modifications are made to the potable water storage or dispensing systems.
- (4) After any intake of potable water into the storage system.

All samples shall meet state and local water quality standards for potable water. A copy of all test results will be forwarded to the Contracting Officer within seven working days for his review.

In the event a tested sample fails to meet state and local water quality standards, all dispensing outlets connected to the failing water storage shall be labeled as non-potable and other means of potable water shall be obtained until water quality can be provided to meet the required standards.

To insure potable water maintains water quality standards all portable potable water dispensing units shall be checked daily for cleanliness. All hoses used in the transfer of potable water shall be conspicuously marked and kept in such a manner as to keep them from being contaminated. These hoses shall be used for potable water transfer only.

End of Paragraph

## **20. PRESERVATION OF HISTORICAL, ARCHEOLOGICAL AND CULTURAL RESOURCES**

(a) If known historical, archeological and cultural resources exist within the Contractor's work area, they have been designated on the contract drawings. The Contractor shall install protection for these resources as shown on the drawings and shall be responsible for their preservation during the contract.

(b) If, during construction activities, the Contractor observes items that might have historical or archeological value, such observations shall be reported immediately to the Contracting Officer so that the appropriate authorities may be notified and a determination can be made as to their significance and what, if any, special disposition of the finds should be made. The Contractor shall cease all activities that may result in the destruction of these resources and shall prevent his employees from trespassing on, removing, or otherwise damaging such resources.

## **21. WORK IN QUARANTINED AREA**

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.

End of Paragraph

## **22. KEY PERSONNEL, SUBCONTRACTORS AND OUTSIDE ASSOCIATES OR CONSULTANTS**

Any key in-house personnel, subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these designated key personnel, subcontractors, associates, or consultants.

End of Paragraph

## **23. ACCOMMODATIONS AND MEALS FOR INSPECTORS**

a. The Contractor shall furnish regularly to inspectors on board the dredge or other craft upon which they are employed, a suitable separate room for office purposes. The room shall be fully equipped and maintained to the satisfaction of the Contracting Officer; it shall be properly heated, ventilated, and lighted, and shall have a desk which can be locked, a chair for each inspector, and washing conveniences. The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price. If the Contractor fails to meet these requirements, the facilities referred to above will be secured by the Contracting Officer, and the cost thereof will be deducted from payments to the Contractor.

b. If the Contractor maintains on this work an establishment for the subsistence of his own employees, he shall, when required, furnish the 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 Contractor will be responsible for collecting from all inspectors and other Government agents the following amount per person for each meal:

Breakfast - \$2.25, Lunch - \$3.25 and Dinner - \$3.50. End of Paragraph

End of Paragraph

## **24. SEAGOING BARGE ACT**

The Seagoing Barge Act (46 U.S. C. 395 et seq.) applies to this project. In the event the low bidder contemplates using plant that requires U.S. Coast Guard certification to comply with this Act, the low bidder shall within 15 calendar days after bid opening

submit a copy of said certificate to the Contracting Officer. Failure to produce the certificate within the required time shall subject the bidder to a determination of nonresponsibility.

End of Paragraph

## **25. DELIVERY, PROSECUTION AND TERMINATION**

(a) The dredge and attendant plant shall be delivered by and at the expense of the Contractor to the Mobile District's navigation projects located in Mobile County, Alabama and Baldwin County, Alabama.

(b) The Contractor shall prosecute the work assigned him with faithfulness and energy, and at all times endeavor to meet the schedule of dredging operations as determined by the Contracting Officer.

(c) Upon termination of the lease, the plant will be released to the Contractor.

End of Paragraph

## **26. SUNDAYS, HOLIDAYS AND NIGHTS**

Due to the nature of the work, a twenty-four (24) hour operation will be performed on a seven (7) day week schedule. Work shall be performed on days declared by Congress as holidays for per diem employees that fall within the work described above. Deviation from the work week contracted for will be subject to the approval of the Contracting Officer.

Operation Day. The dredge, together with the necessary attendant plant and with adequate crew, shall be operated 24 hours per day on an optional shift basis.

End of Paragraph

## **27. RETAINAGE - SMALL BUSINESS SUBCONTRACTING REPORTING**

Reference is made to contract clause(s) 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) and 52.219-16, Liquidated Damages--Small Business Subcontracting Plan. In order to ensure compliance with these clauses, retainage will be withheld from progress payments due the contractor in an amount sufficient to protect the Government's ability to assess Liquidated Damages for failure to submit timely SF 294 and SF 295 reports.

The formula for retainage is as follows: "Total dollar amount proposed for subcontracting to small business multiplied by percentage of actual progress on the contract, up to a maximum of 10% of the given progress payment, shall be withheld

from the next progress payment due after a contractor fails to submit a required report. If one or more reports have been submitted before such failure, formula for determining the amount of retainage will be adjusted by deducting any amounts reported as subcontracted to small business from the total dollar amount proposed to be subcontracted and the difference multiplied by the percent of actual progress, up to a maximum of 10% of the given progress payment."

End of Paragraph

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PROMPT PAYMENT CERTIFICATION AND SUPPORTING DATA FOR CONTRACTOR PROGRESS PAYMENT INVOICE

Contractor Name and Address	Contract No.	Est. No.	Date	Discount Terms
Description and Location of Work	Designated Contractor Official and Address for Payment		Defective Invoice Notification (Name, Title, Telephone)	
Subcontractor Name	Total Amount Subcontracted	Subcontractor Amount Included This Payment Est	Previous Subcontractor Payments	Subcontractor Earnings Deducted by Contractor (Total to Date)

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

- (1) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code; and
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

(NAME)  
(TITLE)

(DATE)

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SECTION 01 32 01.00 10

PROJECT SCHEDULE: BAR CHART

PART 1 GENERAL

1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittal

PROJECT SCHEDULE AND CURVE; G,OP

PART 2 EXECUTION

2.1 GENERAL REQUIREMENTS

Prepare for approval a Practicable Project Schedule and Curve, as specified herein. Show in the schedule the sequence in which the Contractor proposes to perform the work and dates on which the Contractor contemplates starting and completing all schedule activities. Provide a schedule that is a forward planning as well as a project monitoring tool.

2.2 BASIS FOR PAYMENT

The approved Project Schedule shall be used to measure the progress of the work, to aid in evaluating time extensions, and to provide the basis of all progress payments.

2.3 PROJECT SCHEDULE AND CURVE

The Project Schedule shall be in the form of a chart consisting of a series of bars graphically indicating the sequence proposed to accomplish each work feature or operation. Each bar will represent a work feature, system or series of activities within the construction project. The chart shall be prepared to show the starting and completion dates of all work features on a linear horizontal time scale beginning with date of Notice to Proceed and indicating calendar days to completion. Interdependence of status of activities shall be shown. Horizontal time scale shall allow identification of the first work day each week, which shall be identified. Space between bars shall be allowed for future revisions and notations. The Initial Project Schedule shall be submitted for approval within fifteen (15) calendar days after Notice to Proceed. The schedule shall provide a reasonable sequence of activities which represent work through the entire project and shall be at a reasonable level of detail. The initial schedule shall be reviewed by the Government to determine compliance with contract requirements and realistic completion of the project in the period indicated. A revised project schedule shall be submitted based on Government review, if required.

With the Project Schedule, the Contractor shall also submit for approval a progress curve which reflects the intended schedule for completing the work. The progress curve (S-Curve) will be plotted to reflect Cumulative Progress (Percent) based on placement along the y-axis and Time along the x-axis.

#### 2.3.1 SCHEDULE AND PROGRESS CURVE UPDATE

Approved Schedule and Progress Curve will be updated monthly during the entire duration of construction. Not later than four days after the Monthly Progress Meeting the Contractor shall submit the updated Project Schedule and Progress Curve. The updated versions shall include all approved contract revisions, progress of each activity to date of submission, and adjustments. Contractor shall also provide a very brief narrative report as required to indicate any problem areas, anticipated delays, impact on schedule, and corrective action.

#### 2.3.2 PERIODIC PROGRESS MEETINGS

Progress meetings to discuss payment shall include on-site meetings or other regular intervals mutually agreed to at the preconstruction conference. During this meeting the Contractor will describe, on an activity by activity basis, all proposed revision and adjustments to the project schedule required to reflect the current status of the project. The Contracting Officer will review activity progress, proposed revisions, and adjustments as appropriate.

-- End of Section --



SECTION 01 33 00

SUBMITTAL PROCEDURES

05/11

PART 1 GENERAL

1.1 SUMMARY

The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections.

Units of weights and measures used on all submittals are to be the same as those used in the contract drawings.

Each submittal is to be complete and in sufficient detail to allow ready determination of compliance with contract requirements.

Contractor's Quality Control (CQC) System Manager to check and approve all items prior to submittal and stamp, sign, and date indicating action taken. Proposed deviations from the contract requirements are to be clearly identified. Include within submittals items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list); certifications; warranties; and other such required submittals.

Submittals requiring Government approval are to be scheduled and made prior to the acquisition of the material or equipment covered thereby. Pick up and dispose of samples not incorporated into the work in accordance with manufacturer's material Safety Data Sheets (SDS) and in compliance with existing laws and regulations.

1.2 DEFINITIONS

1.2.1 Submittal Descriptions (SD)

Submittals requirements are specified in the technical sections. Submittals are identified by Submittal Description (SD) numbers and titles as follows:

SD-01 Preconstruction Submittals

Submittals which are required prior to or the start of the next major phase of the construction on a multi-phase contract, includes schedules, tabular list of data, or tabular list including location, features, or other pertinent information regarding products, materials, equipment, or components to be used in the work.

SD-02 Shop Drawings

Drawings, diagrams and schedules specifically prepared to illustrate some portion of the work.

Diagrams and instructions from a manufacturer or fabricator for use in producing the product and as aids to the Contractor for integrating the

product or system into the project.

Drawings prepared by or for the Contractor to show how multiple systems and interdisciplinary work will be coordinated.

#### SD-03 Product Data

Catalog cuts, illustrations, schedules, diagrams, performance charts, instructions and brochures illustrating size, physical appearance and other characteristics of materials, systems or equipment for some portion of the work.

Samples of warranty language when the contract requires extended product warranties.

#### SD-04 Samples

Fabricated or unfabricated physical examples of materials, equipment or workmanship that illustrate functional and aesthetic characteristics of a material or product and establish standards by which the work can be judged.

Color samples from the manufacturer's standard line (or custom color samples if specified) to be used in selecting or approving colors for the project.

Field samples and mock-ups constructed on the project site establish standards by which the ensuing work can be judged. Includes assemblies or portions of assemblies which are to be incorporated into the project and those which will be removed at conclusion of the work.

#### SD-05 Design Data

Design calculations, mix designs, analyses or other data pertaining to a part of work.

#### SD-06 Test Reports

Report signed by authorized official of testing laboratory that a material, product or system identical to the material, product or system to be provided has been tested in accord with specified requirements. (Testing must have been within three years of date of contract award for the project.)

Report which includes findings of a test required to be performed by the Contractor on an actual portion of the work or prototype prepared for the project before shipment to job site.

Report which includes finding of a test made at the job site or on sample taken from the job site, on portion of work during or after installation.

Investigation reports.

Daily logs and checklists.

Final acceptance test and operational test procedure.

#### SD-07 Certificates

Statements printed on the manufacturer's letterhead and signed by responsible officials of manufacturer of product, system or material attesting that product, system or material meets specification requirements. Must be dated after award of project contract and clearly name the project.

Document required of Contractor, or of a manufacturer, supplier, installer or Subcontractor through Contractor, the purpose of which is to further quality of orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel qualifications.

Confined space entry permits.

Text of posted operating instructions.

#### SD-10 Operation and Maintenance Data

Data that is furnished by the manufacturer, or the system provider, to the equipment operating and maintenance personnel, including manufacturer's help and product line documentation necessary to maintain and install equipment. This data is needed by operating and maintenance personnel for the safe and efficient operation, maintenance and repair of the item.

This data is intended to be incorporated in an operations and maintenance manual or control system.

#### SD-11 Closeout Submittals

Documentation to record compliance with technical or administrative requirements or to establish an administrative mechanism.

Special requirements necessary to properly close out a construction contract. For example, Record Drawings and as-built drawings. Also, submittal requirements necessary to properly close out a major phase of construction on a multi-phase contract.

#### 1.2.2 Approving Authority

Office or designated person authorized to approve submittal.

#### 1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with this section.

##### SD-01 Preconstruction Submittals

Submittal Register; G, OP

Fleeting Area Plan; G, OP

Pipeline Route Plan; G, OP

#### 1.4 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

##### 1.4.1 Government Approved (G)

Government approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled, "Specifications and Drawings for Construction," they are considered to be "shop drawings."

##### 1.4.2 Information Only (FIO)

Submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.

#### 1.5 PREPARATION

##### 1.5.1 Transmittal Form

Use the attached sample transmittal form (ENG Form 4025) for submitting both Government approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms are also included in the QCS software that the Contractor is required to use for this contract. Properly complete this form by filling out all the heading blank spaces and identifying each item submitted. Exercise special care to ensure proper listing of the specification paragraph and sheet number of the contract drawings pertinent to the data submitted for each item.

#### 1.6 QUANTITY OF SUBMITTALS

##### 1.6.1 Number of Copies of SD-02 Shop Drawings

Submit four copies of submittals of shop drawings requiring review and approval by the Government.

##### 1.6.2 Number of Copies of SD-01 Preconstruction Submittals and SD-11 Closeout Submittals

Unless otherwise specified, submit three sets of administrative submittals.

#### 1.7 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Approval of the Contracting Officer is not required on information only submittals. The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so prescribe.

## 1.8 SUBMITTAL REGISTER

Prepare and maintain submittal register, as the work progresses. Do not change data which is output in columns (c), (d), (e), and (f) as delivered by Government; retain data which is output in columns (a), (g), (h), and (i) as approved. A submittal register showing items of equipment and materials for which submittals are required by the specifications is provided as an attachment. This list may not be all inclusive and additional submittals may be required. Maintain a submittal register for the project in accordance with Section 01 45 00.15 10 RESIDENT MANAGEMENT SYSTEM CONTRACTOR MODE (RMS CM) ).

Column (c): Lists specification section in which submittal is required.

Column (d): Lists each submittal description (SD No. and type, e.g. SD-02 Shop Drawings) required in each specification section.

Column (e): Lists one principal paragraph in specification section where a material or product is specified. This listing is only to facilitate locating submitted requirements. Do not consider entries in column (e) as limiting project requirements.

Thereafter, the Contractor is to track all submittals by maintaining a complete list, including completion of all data columns, including dates on which submittals are received and returned by the Government.

### 1.8.1 Use of Submittal Register

Submit submittal register. Submit with QC plan and project schedule. Verify that all submittals required for project are listed and add missing submittals. Coordinate and complete the following fields on the register submitted with the QC plan and the project schedule:

Column (a) Activity Number: Activity number from the project schedule.

Column (g) Contractor Submit Date: Scheduled date for approving authority to receive submittals.

Column (h) Contractor Approval Date: Date Contractor needs approval of submittal.

Column (i) Contractor Material: Date that Contractor needs material delivered to Contractor control.

### 1.8.2 Contractor Use of Submittal Register

Update the following fields with each submittal throughout contract.

Column (b) Transmittal Number: Contractor assigned list of consecutive numbers.

Column (j) Action Code (k): Date of action used to record Contractor's review when forwarding submittals to QC.

Column (l) List date of submittal transmission.

Column (q) List date approval received.

### 1.8.3 Approving Authority Use of Submittal Register

Update the following fields.

Column (b) Transmittal Number: Contractor assigned list of consecutive numbers.

Column (l) List date of submittal receipt.

Column (m) through (p) List Date related to review actions.

Column (q) List date returned to Contractor.

### 1.8.4 Copies Delivered to the Government

Deliver one copy of submittal register updated by Contractor to Government with each invoice request.

## 1.9 SCHEDULING

Schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Include certifications to be submitted with the pertinent drawings at the same time. No delay damages or time extensions will be allowed for time lost in late submittals.

- a. Coordinate scheduling, sequencing, preparing and processing of submittals with performance of work so that work will not be delayed by submittal processing. Allow for potential resubmittal of requirements.
- b. Submittals called for by the contract documents will be listed on the register. If a submittal is called for but does not pertain to the contract work, the Contractor is to include the submittal in the register and annotate it "N/A" with a brief explanation. Approval by the Contracting Officer does not relieve the Contractor of supplying submittals required by the contract documents but which have been omitted from the register or marked "N/A."
- c. Re-submit register and annotate monthly by the Contractor with actual submission and approval dates. When all items on the register have been fully approved, no further re-submittal is required.
- d. Carefully control procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

## 1.10 GOVERNMENT APPROVING AUTHORITY

When approving authority is Contracting Officer, the Government will:

- a. Note date on which submittal was received.
- b. Review submittals for approval within scheduling period specified and only for conformance with project design concepts and compliance with contract documents.
- c. Identify returned submittals with one of the actions defined in paragraph entitled, "Review Notations," of this section and with

markings appropriate for action indicated.

Upon completion of review of submittals requiring Government approval, stamp and date approved submittals. 2 copies of the approved submittal will be retained by the Contracting Officer and 2 copies of the submittal will be returned to the Contractor.

#### 1.10.1 Review Notations

Contracting Officer review will be completed within 30 calendar days after date of submission. Submittals will be returned to the Contractor with the following notations:

- a. Submittals marked "approved" or "accepted" authorize the Contractor to proceed with the work covered.
- b. Submittals marked "approved as noted" "or approved except as noted, resubmittal not required," authorize the Contractor to proceed with the work covered provided he takes no exception to the corrections.
- c. Submittals marked "not approved" or "disapproved," or "revise and resubmit," indicate noncompliance with the contract requirements or design concept, or that submittal is incomplete. Resubmit with appropriate changes. No work shall proceed for this item until resubmittal is approved.
- d. Submittals marked "not reviewed" will indicate submittal has been previously reviewed and approved, is not required, does not have evidence of being reviewed and approved by Contractor, or is not complete. A submittal marked "not reviewed" will be returned with an explanation of the reason it is not reviewed. Resubmit submittals returned for lack of review by Contractor or for being incomplete, with appropriate action, coordination, or change.

#### 1.11 DISAPPROVED OR REJECTED SUBMITTALS

Contractor shall make corrections required by the Contracting Officer. If the Contractor considers any correction or notation on the returned submittals to constitute a change to the contract drawings or specifications; notice as required under the clause entitled, "Changes," is to be given to the Contracting Officer. Contractor is responsible for the dimensions and design of connection details and construction of work. Failure to point out deviations may result in the Government requiring rejection and removal of such work at the Contractor's expense.

If changes are necessary to submittals, the Contractor shall make such revisions and submission of the submittals in accordance with the procedures above. No item of work requiring a submittal change is to be accomplished until the changed submittals are approved.

#### 1.12 APPROVED/ACCEPTED SUBMITTALS

The Contracting Officer's approval or acceptance of submittals is not to be construed as a complete check, and indicates only that the general method of construction, materials, detailing and other information are satisfactory.

Approval or acceptance will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the

Contractor Quality Control (CQC) requirements of this contract is responsible for dimensions.

After submittals have been approved or accepted by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

#### 1.13 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements is to be similar to the following:



<p>CONTRACTOR</p> <p>(Firm Name)</p> <p>_____ Approved</p> <p>_____ Approved with corrections as noted on submittal data and/or attached sheets(s)</p> <p>SIGNATURE: _____</p> <p>TITLE: _____</p> <p>DATE: _____</p>
---

-- End of Section --

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<b>TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE</b> <i>(Read instruction on the reverse side prior to initiating this form)</i>	DATE	TRANSMITTAL NO.
--	------	-----------------

**SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)***

TO:	FROM:	CONTRACT NO.	CHECK ONE: <input type="checkbox"/> THIS IS A NEW TRANSMITTAL <input type="checkbox"/> THIS IS A RESUBMITTAL OF TRANSMITTAL _____
-----	-------	--------------	---

SPECIFICATION SEC. NO. <i>(Cover only one section with each transmittal)</i>	PROJECT TITLE AND LOCATION
--	----------------------------

ITEM NO.	DESCRIPTION OF ITEM SUBMITTED <i>(Type size, model number/etc.)</i>	MFG OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. <i>(See instruction no. 8)</i>	NO. OF COPIES	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE	VARIATION <i>(See instruction No. 6)</i>	FOR CE USE CODE
				SPEC. PARA. NO.	DRAWING SHEET NO.			
<i>a.</i>	<i>b.</i>	<i>c.</i>	<i>d.</i>	<i>e.</i>	<i>f.</i>	<i>g.</i>	<i>h.</i>	<i>i.</i>

REMARKS	I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated.          <div align="right">_____ NAME AND SIGNATURE OF CONTRACTOR</div>
---------	---

**SECTION II - APPROVAL ACTION**

ENCLOSURES RETURNED (List by Item No.)	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE
--	--	------

## INSTRUCTIONS

1. Section 1 will be initiated by the Contractor in the required number of copies.
2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmits mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.
3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288 for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

### THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- |  |   |
|--|---|
| A -- Approved as submitted.  | E -- Disapproved (See attached).  |
| B -- Approved, except as noted on drawings.  | F -- Receipt acknowledge.   |
| C -- Approved, except as noted on drawings.<br>Refer to attached sheet resubmission required | FX -- Receipt acknowledged, does not comply<br>as noted with contract requirements. |
| D -- Will be returned by separate correspondence.  | G -- Other ( <i>Specify</i> )   |
10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

# SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION

MsCIP Comp Barrier Isle Restoration Plan Ship Isle Phases 3 and 4

CONTRACTOR

ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH	GOVT CLASSIFICATION REVIEW	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION			APPROVING AUTHORITY				MAILED TO CONTR/ DATE RCD FRM APPR AUTH	REMARKS
						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE FWD TO APPR AUTH/ DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01 00 00	SD-01 Preconstruction Submittals														
			Survey Plan;	1.11.2	G OP												
			SD-05 Design Data														
			Preconstruction Surveys;	1.11.3.5	G OP												
			Acceptance Surveys;	1.11.3.6	G OP												
			Post-construction Surveys;	1.11.3.7	G OP												
			SD-06 Test Reports														
			Daily Survey Reports	1.11.1													
			SD-11 Closeout Submittals														
			Contractor Prepared As-Built Drawings;	1.7	G OP												
		01 32 01.00 10	SD-01 Preconstruction Submittals														
			PROJECT SCHEDULE AND CURVE;	2.3	G OP												
		01 33 00	SD-01 Preconstruction Submittals														
			Submittal Register	1.8	G OP												
			Fleeting Area Plan		G OP												
			Pipeline Route Plan		G OP												
		01 35 26	SD-01 Preconstruction Submittals														
			Accident Prevention Plan (APP)	1.6	G SO												
			SD-06 Test Reports														
			Monthly Exposure Reports	1.4													
			Notifications and Reports	1.11													
			Accident Reports	1.11.2	G SO												
			LHE Inspection Reports	1.11.3													
			SD-07 Certificates														

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						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION	DATE RCD FRM APPR AUTH	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01 35 26	Crane Operators/Riggers	1.5.1.6													
			Standard Lift Plan	1.6.2.2	G SO												
			Critical Lift Plan	1.6.2.3	G SO												
			Naval Architecture Analysis	1.6.2.3	G SO												
			Activity Hazard Analysis (AHA)	1.7													
			Confined Space Entry Permit	1.8.1													
			Hot Work Permit	1.8.1													
			Certificate of Compliance	1.11.4													
			License Certificates														
		01 45 00.00 10	SD-01 Preconstruction Submittals														
			Contractor Quality Control (CQC)	3.2	G OP												
			Plan														
			Contractor Quality Control (CQC)	3.2	G OP												
			Plan														
			SD-06 Test Reports														
			Verification Statement	3.9.2													
		01 57 19	SD-01 Preconstruction Submittals														
			Environmental Protection Plan		G PD												
			Qualifications		G PD												
			Archaeological Monitoring Plan		G PD												
			Archaeology Survey Research		G PD												
			Design														
			Sea Turtle Deflector Checklist For														
			Hopper Dredges														
			Special Use Permit: Construction		G PD												

# SUBMITTAL REGISTER

CONTRACT NO.

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						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE FWD TO APPR AUTH/ DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01 57 19	Scientific Research And Collecting Permit, Nesting Shorebird And Sea Turtle Nest Relocating And Monitoring		G PD												
			State of Mississippi Endangered Species Handling Permit		G PD												
			Dredge Lighting Plan		G PD												
			SD-10 Operation and Maintenance Data														
			Mississippi Sea Turtle Crawl Datasheet														
			Dredge Load Data Form														
			Marine Mammal Observation														
			Sturgeon Incident														
			Turtle Incident														
			Trawling Report														
			Cooperative Marine Turtle Tagging Program (CMTTP)														
			Tagging Data Form														
			Turbidity Monitoring Report														
		35 20 23.13	SD-01 Preconstruction Submittals														
			Dredge Plant Instrumentation Plan (DPIP)	1.5	G OP												
			SD-06 Test Reports														
			Data Appropriately Archived	3.2.5	G OP												
			Email														

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						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION	DATE RCD FRM APPR AUTH	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		35 20 23.13	SD-07 Certificates														
			Letter of National Dredging		G OP												
			Quality Management Program														
			Certification														
		35 20 23.23	SD-01 Preconstruction Submittals														
			Dredge Plant Instrumentation		G OP												
			Plan Revisions or Addendum														
			SD-06 Test Reports														
			Data Appropriately Archived	3.2.10	G OP												
			Email														
			SD-07 Certificates														
			Letter of National Dredging		G OP												
			Quality Management Program														
			Certification														
		35 20 25	SD-01 Preconstruction Submittals														
			General Work Plan	3.1.5	G OP												
			CULTURAL RESOURCE		G OP												
			SENSITIVITY BRIEFING SCRIPT														
			AND FORM														
			Relocation of Navigation Aids	1.6.1	G OP												
			Construction and Grade Stakes	3.5.2.2	G OP												
			Recovery Plan														
			Unacceptable Material	3.7.4	G OP												
			Contingency Plan														
			Obstruction Identification and	3.2.2	G OP												
			Removal Plan														



# SUBMITTAL REGISTER

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						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION		DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		35 20 25	SD-02 Shop Drawings														
			Electronic Tracking System	3.2.3	G OP												
			Charts														
			Dredge Location Control	3.2.3	G OP												
			Color-Coded Plot														
			SD-03 Product Data														
			Equipment and Performance	3.2.3	G OP												
			Data														
			Declaration of Inspection	1.5.2	G OP												
			SD-04 Samples														
			Quality Control for Satisfactory														
			Fill														
			SD-06 Test Reports														
			Dredge Progress Report	1.4.2	G OP												
			Laboratory Test Results	3.7.2	G OP												
			SD-07 Certificates														
			Notice of Intent to Dredge	1.4.2	G OP												
			Grade Stake Recovery	3.5.2.2	G OP												
			Buoy and Anchoring Inventory	3.1.5	G OP												
			Recovery														
			Notification of Discovery of	1.5.6	G OP												
			Archeological Sites														
			Notice of Misplaced Material	3.5.5	G OP												
			SD-11 Closeout Submittals														
			Project Completion Report	3.6.3	G OP												

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SECTION 01 35 26

GOVERNMENTAL SAFETY REQUIREMENTS  
11/15

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

AMERICAN SOCIETY OF SAFETY ENGINEERS (ASSE/SAFE)

ASSE/SAFE A10.34	(2001; R 2012) Protection of the Public on or Adjacent to Construction Sites
ASSE/SAFE A10.44	(2014) Control of Energy Sources (Lockout/Tagout) for Construction and Demolition Operations
ASSE/SAFE Z244.1	(2003; R 2014) Control of Hazardous Energy Lockout/Tagout and Alternative Methods
ASSE/SAFE Z359.0	(2012) Definitions and Nomenclature Used for Fall Protection and Fall Arrest
ASSE/SAFE Z359.1	(2007) Safety Requirements for Personal Fall Arrest Systems, Subsystems and Components
ASSE/SAFE Z359.11	(2014) Safety Requirements for Full Body Harnesses
ASSE/SAFE Z359.12	(2009) Connecting Components for Personal Fall Arrest Systems
ASSE/SAFE Z359.13	(2013) Personal Energy Absorbers and Energy Absorbing Lanyards
ASSE/SAFE Z359.14	(2014) Safety Requirements for Self-Retracting Devices for Personal Fall Arrest and Rescue Systems
ASSE/SAFE Z359.15	(2014) Safety Requirements for Single Anchor Lifelines and Fall Arresters for Personal Fall Arrest Systems
ASSE/SAFE Z359.2	(2007) Minimum Requirements for a Comprehensive Managed Fall Protection Program
ASSE/SAFE Z359.3	(2007) Safety Requirements for Positioning and Travel Restraint Systems
ASSE/SAFE Z359.4	(2013) Safety Requirements for Assisted-Rescue and Self-Rescue Systems,

Subsystems and Components

ASSE/SAFE Z359.6 (2009) Specifications and Design  
Requirements for Active Fall Protection  
Systems

ASSE/SAFE Z359.7 (2011) Qualification and Verification  
Testing of Fall Protection Products

ASME INTERNATIONAL (ASME)

ASME B30.20 (2013; INT Oct 2010 - May 2012)  
Below-the-Hook Lifting Devices

ASME B30.22 (2010) Articulating Boom Cranes

ASME B30.26 (2015; INT Jun 2010 - Jun 2014) Rigging  
Hardware

ASME B30.3 (2016) Tower Cranes

ASME B30.5 (2014) Mobile and Locomotive Cranes

ASME B30.8 (2015) Floating Cranes and Floating  
Derricks

ASME B30.9 (2014; INT Feb 2011 - Nov 2013) Slings

ASTM INTERNATIONAL (ASTM)

ASTM F855 (2015) Standard Specifications for  
Temporary Protective Grounds to Be Used on  
De-energized Electric Power Lines and  
Equipment

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)

IEEE 1048 (2003) Guide for Protective Grounding of  
Power Lines

IEEE C2 (2012; Errata 1 2012; INT 1-4 2012; Errata  
2 2013; INT 5-7 2013; INT 8-10 2014; INT  
11 2015; INT 12 2016) National Electrical  
Safety Code

NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)

NFPA 10 (2013) Standard for Portable Fire  
Extinguishers

NFPA 241 (2013; Errata 2015) Standard for  
Safeguarding Construction, Alteration, and  
Demolition Operations

NFPA 51B (2014) Standard for Fire Prevention During  
Welding, Cutting, and Other Hot Work

NFPA 70 (2014; AMD 1 2013; Errata 1 2013; AMD 2  
2013; Errata 2 2013; AMD 3 2014; Errata

3-4 2014; AMD 4-6 2014) National  
Electrical Code

NFPA 70E (2015; ERTA 1 2015) Standard for  
Electrical Safety in the Workplace

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 (2014) Safety and Health Requirements  
Manual

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

29 CFR 1910 Occupational Safety and Health Standards  
29 CFR 1910.146 Permit-required Confined Spaces  
29 CFR 1910.147 Control of Hazardous Energy (Lock Out/Tag  
Out)  
29 CFR 1910.333 Selection and Use of Work Practices  
29 CFR 1915 Confined and Enclosed Spaces and Other  
Dangerous Atmospheres in Shipyard  
Employment  
29 CFR 1915.89 Control of Hazardous Energy  
(Lockout/Tags-Plus)  
29 CFR 1926 Safety and Health Regulations for  
Construction  
29 CFR 1926.1400 Cranes and Derricks in Construction  
29 CFR 1926.16 Rules of Construction  
29 CFR 1926.450 Scaffolds  
29 CFR 1926.500 Fall Protection  
CPL 2.100 (1995) Application of the Permit-Required  
Confined Spaces (PRCS) Standards, 29 CFR  
1910.146

1.2 DEFINITIONS

1.2.1 Competent Person (CP)

The CP is a person designated in writing, who, through training, knowledge and experience, is capable of identifying, evaluating, and addressing existing and predictable hazards in the working environment or working conditions that are dangerous to personnel, and who has authorization to take prompt corrective measures with regards to such hazards.

1.2.2 Competent Person, Confined Space

The CP, Confined Space, is a person meeting the competent person requirements as defined EM 385-1-1 Appendix Q, with thorough knowledge of OSHA's Confined Space Standard, 29 CFR 1910.146, and designated in writing

to be responsible for the immediate supervision, implementation and monitoring of the confined space program, who through training, knowledge and experience in confined space entry is capable of identifying, evaluating and addressing existing and potential confined space hazards and, who has the authority to take prompt corrective measures with regard to such hazards.

#### 1.2.3 Competent Person, Cranes and Rigging

The CP, Cranes and Rigging, as defined in EM 385-1-1 Appendix Q, is a person meeting the competent person, who has been designated in writing to be responsible for the immediate supervision, implementation and monitoring of the Crane and Rigging Program, who through training, knowledge and experience in crane and rigging is capable of identifying, evaluating and addressing existing and potential hazards and, who has the authority to take prompt corrective measures with regard to such hazards.

#### 1.2.4 Competent Person, Excavation/Trenching

A CP, Excavation/Trenching, is a person meeting the competent person requirements as defined in EM 385-1-1 Appendix Q and 29 CFR 1926, who has been designated in writing to be responsible for the immediate supervision, implementation and monitoring of the excavation/trenching program, who through training, knowledge and experience in excavation/trenching is capable of identifying, evaluating and addressing existing and potential hazards and, who has the authority to take prompt corrective measures with regard to such hazards.

#### 1.2.5 Competent Person, Fall Protection

The CP, Fall Protection, is a person meeting the competent person requirements as defined in EM 385-1-1 Appendix Q and in accordance with ASSE/SAFE Z359.0, who has been designated in writing by the employer to be responsible for immediate supervising, implementing and monitoring of the fall protection program, who through training, knowledge and experience in fall protection and rescue systems and equipment, is capable of identifying, evaluating and addressing existing and potential fall hazards and, who has the authority to take prompt corrective measures with regard to such hazards.

#### 1.2.6 Competent Person, Scaffolding

The CP, Scaffolding is a person meeting the competent person requirements in EM 385-1-1 Appendix Q, and designated in writing by the employer to be responsible for immediate supervising, implementing and monitoring of the scaffolding program. The CP for Scaffolding has enough training, knowledge and experience in scaffolding to correctly identify, evaluate and address existing and potential hazards and also has the authority to take prompt corrective measures with regard to these hazards. CP qualifications must be documented and include experience on the specific scaffolding systems/types being used, assessment of the base material that the scaffold will be erected upon, load calculations for materials and personnel, and erection and dismantling. The CP for scaffolding must have a documented, minimum of 8-hours of scaffold training to include training on the specific type of scaffold being used (e.g., mast-climbing, adjustable, tubular frame), in accordance with EM 385-1-1 Section 22.B.02.

#### 1.2.7 Competent Person (CP) Trainer

A competent person trainer as defined in EM 385-1-1 Appendix Q, who is qualified in the material presented, and who possesses a working knowledge of applicable technical regulations, standards, equipment and systems related to the subject matter on which they are training Competent Persons. A competent person trainer must be familiar with the typical hazards and the equipment used in the industry they are instructing. The training provided by the competent person trainer must be appropriate to that specific industry. The competent person trainer must evaluate the knowledge and skills of the competent persons as part of the training process.

#### 1.2.8 High Risk Activities

High Risk Activities are activities that involve work at heights, crane and rigging, excavations and trenching, scaffolding, electrical work, and confined space entry.

#### 1.2.9 High Visibility Accident

A High Visibility Accident is any mishap which may generate publicity or high visibility.

#### 1.2.10 Load Handling Equipment (LHE)

LHE is a term used to describe cranes, hoists and all other hoisting equipment (hoisting equipment means equipment, including crane, derricks, hoists and power operated equipment used with rigging to raise, lower or horizontally move a load).

#### 1.2.11 Medical Treatment

Medical Treatment is treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered personnel.

#### 1.2.12 Near Miss

A Near Miss is a mishap resulting in no personal injury and zero property damage, but given a shift in time or position, damage or injury may have occurred (e.g., a worker falls off a scaffold and is not injured; a crane swings around to move the load and narrowly misses a parked vehicle).

#### 1.2.13 Operating Envelope

The Operating Envelope is the area surrounding any crane or load handling equipment. Inside this "envelope" is the crane, the operator, riggers and crane walkers, other personnel involved in the operation, rigging gear between the hook, the load, the crane's supporting structure (i.e. ground or rail), the load's rigging path, the lift and rigging procedure.

#### 1.2.14 Qualified Person (QP)

The QP is a person designated in writing, who, by possession of a recognized degree, certificate, or professional standing, or extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems related to the subject matter, the

work, or the project.

#### 1.2.15 Qualified Person, Fall Protection (QP for FP)

A QP for FP is a person meeting the requirements of EM 385-1-1 Appendix Q, and ASSE/SAFE Z359.0, with a recognized degree or professional certificate and with extensive knowledge, training and experience in the fall protection and rescue field who is capable of designing, analyzing, and evaluating and specifying fall protection and rescue systems.

#### 1.2.16 Recordable Injuries or Illnesses

Recordable Injuries or Illnesses are any work-related injury or illness that results in:

- a. Death, regardless of the time between the injury and death, or the length of the illness;
- b. Days away from work (any time lost after day of injury/illness onset);
- c. Restricted work;
- d. Transfer to another job;
- e. Medical treatment beyond first aid;
- f. Loss of consciousness; or
- g. A significant injury or illness diagnosed by a physician or other licensed health care professional, even if it did not result in (a) through (f) above.

#### 1.2.17 USACE Property and Equipment

Interpret "USACE" property and equipment specified in USACE EM 385-1-1 as Government property and equipment.

#### 1.2.18 Load Handling Equipment (LHE) Accident or Load Handling Equipment Mishap

A LHE accident occurs when any one or more of the eight elements in the operating envelope fails to perform correctly during operation, including operation during maintenance or testing resulting in personnel injury or death; material or equipment damage; dropped load; derailment; two-blocking; overload; or collision, including unplanned contact between the load, crane, or other objects. A dropped load, derailment, two-blocking, overload and collision are considered accidents, even though no material damage or injury occurs. A component failure (e.g., motor burnout, gear tooth failure, bearing failure) is not considered an accident solely due to material or equipment damage unless the component failure results in damage to other components (e.g., dropped boom, dropped load, or roll over). Document any mishap that meets the criteria described in the Contractor Significant Incident Report (CSIR) using the Crane High Hazard working group mishap reporting form.

#### 1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation;



submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Accident Prevention Plan (APP); G, SO

SD-06 Test Reports

Monthly Exposure Reports

Notifications and Reports

Accident Reports; G, SO

LHE Inspection Reports

SD-07 Certificates

Crane Operators/Riggers

Standard Lift Plan; G, SO

Critical Lift Plan ; G, SO

Naval Architecture Analysis; G, SO

Activity Hazard Analysis (AHA)

Confined Space Entry Permit

Hot Work Permit

Certificate of Compliance

License Certificates

1.4 MONTHLY EXPOSURE REPORTS

Provide a Monthly Exposure Report and attach to the monthly billing request. This report is a compilation of employee-hours worked each month for all site workers, both Prime and subcontractor. Failure to submit the report may result in retention of up to 10 percent of the voucher.

1.5 SITE QUALIFICATIONS, DUTIES, AND MEETINGS

1.5.1 Personnel Qualifications

1.5.1.1 Site Safety and Health Officer (SSHO)

Provide an SSHO that meets the requirements of EM 385-1-1 Section 1. The SSHO must ensure that the requirements of 29 CFR 1926.16 are met for the project. Provide a Safety oversight team that includes a minimum of one (1) person at each project site to function as the Site Safety and Health Officer (SSHO). The SSHO or an equally-qualified Alternate SSHO must be at the work site at all times to implement and administer the Contractor's

safety program and government-accepted Accident Prevention Plan. The SSHO and Alternate SSHO must have the required training, experience, and qualifications in accordance with EM 385-1-1 Section 01.A.17, and all associated sub-paragraphs.

If the SSHO is off-site for a period longer than 24 hours, an equally-qualified alternate SSHO must be provided and must fulfill the same roles and responsibilities as the primary SSHO. When the SSHO is temporarily (up to 24 hours) off-site, a Designated Representative (DR), as identified in the AHA may be used in lieu of an Alternate SSHO, and must be on the project site at all times when work is being performed. Note that the DR is a collateral duty safety position, with safety duties in addition to their full time occupation.

#### 1.5.1.2 Contractor Quality Control (QC) Manager:

The Contractor Quality Control Manager cannot be the SSHO on this project, even though the QC has safety inspection responsibilities as part of the QC duties.

#### 1.5.1.3 Competent Person Qualifications

Provide Competent Persons in accordance with EM 385-1-1, Appendix Q and herein. Competent Persons for high risk activities include confined space, cranes and rigging, excavation/trenching, fall protection, and electrical work. The CP for these activities must be designated in writing, and meet the requirements for the specific activity (i.e. competent person, fall protection).

The Competent Person identified in the Contractor's Safety and Health Program and accepted Accident Prevention Plan, must be on-site at all times when the work that presents the hazards associated with their professional expertise is being performed. Provide the credentials of the Competent Persons(s) to the the Contracting Officer for information in consultation with the Safety Office.

##### 1.5.1.3.1 Competent Person for Confined Space Entry

Provide a Confined Space (CP) Competent Person who meets the requirements of EM 385-1-1, Appendix Q, and herein. The CP for Confined Space Entry must supervise the entry into each confined space.

##### 1.5.1.3.2 Competent Person for Fall Protection

Provide a Competent Person for Fall Protection who meets the requirements of EM 385-1-1, Section 21.C.04 and herein.

#### 1.5.1.4 Qualified Trainer Requirements

Individuals qualified to instruct the 40 hour contract safety awareness course, or portions thereof, must meet the definition of a Competent Person Trainer, and, at a minimum, possess a working knowledge of the following subject areas: EM 385-1-1, Electrical Standards, Lockout/Tagout, Fall Protection, Confined Space Entry for Construction; Excavation, Trenching and Soil Mechanics, and Scaffolds in accordance with 29 CFR 1926.450, Subpart L.

Instructors are required to:

- a. Prepare class presentations that cover construction-related safety requirements.
- b. Ensure that all attendees attend all sessions by using a class roster signed daily by each attendee. Maintain copies of the roster for at least five (5) years. This is a certification class and must be attended 100 percent. In cases of emergency where an attendee cannot make it to a session, the attendee can make it up in another class session for the same subject.
- c. Update training course materials whenever an update of the EM 385-1-1 becomes available.
- d. Provide a written exam of at least 50 questions. Students are required to answer 80 percent correctly to pass.
- e. Request, review and incorporate student feedback into a continuous course improvement program.

#### 1.5.1.5 USACE Dredging Contract Requirements

##### 1.5.1.5.1 SSHO Staffing for USACE Dredging Contracts

- a. Dredging contracts may include several project sites; this contract will require a minimum of 1 full time SSHO(s) assigned per project site. SSHO may be collateral duty in specific conditions listed below.
- b. An example of one dredging project site is reflected in each of the following:
  - (1) a mechanical dredge, tug(s) and scow(s), scow route, and material placement site; or
  - (2) a hydraulic pipeline dredge, attendant plant, and material placement site; or,
  - (3) a hopper dredge (include land-based material placement site - if applicable.)
- c. Individual dredging project sites with work force less than 8 employees, the SSHO may be a collateral duty, with the same responsibilities of a full time SSHO.
- d. Hopper dredges with USCG-Documented crews may designate an officer as a collateral-duty SSHO instead of having a full-time SSHO if the officer meets the SSHO training and experience requirements.

##### 1.5.1.5.2 SSHO Requirements for Dredging

- a. In addition to requirements stated elsewhere in this specification, the SSHO shall be present at the project site, located so they have full mobility and reasonable access to all major work operations, for at least one shift in each 24 hour period when work is being done. The SSHO, or Alternate SSHO, shall be available during all shifts for immediate verbal consultation and notification, either by phone or radio. The SSHO shall be a full-time, dedicated position, except as noted above. The SSHO shall report to a senior project (or corporate) officials.

- b. The SSHO must inspect all work areas and operations during initial set-up and at least monthly observe and provide personal oversight on each shift during dredging operations for projects with many work sites, more often for those with less work sites.
- c. For projects with multiple shifts or when SSHO is temporarily off-site, an Alternate SSHO will be assigned to insure SSHO coverage for the project at all times work activities are conducted. The Alternate SSHO must meet the same requirements and assume the responsibilities of the project SSHO. The Alternate SSHO position may be a collateral duty.
- d. If the SSHO is off-site for a period longer than 24 hours, a qualified replacement SSHO shall be provided and shall fulfill the same roles and responsibilities as the primary/initial SSHO.

#### 1.5.1.5.3 Designated Representative (DR) Requirements for Dredging

- a. Designated Representatives (DR) are collateral duty safety personnel, with safety duties in addition to their full-time occupation, and support and supplement the SSHO efforts in managing, implementing and enforcing the Contractor's Safety and Health Program. DRs shall be individual(s) with work oversight responsibilities, such as masters, mates, fill foremen, and superintendents. DRs should not be positions requiring continuous mechanical or equipment operations, such as equipment operators.
- b. A DR shall be appointed for all remote work locations more than 45 minutes' travel time from the SSHO's duty location, typically including dredged material placement sites, towing and scow operations, and other operations.
- c. The DRs will perform safety program tasks as designated by the SSHO and report safety findings to the SSHO/Alternate SSHO. The SSHO shall document results of safety findings and provide information for inclusion in the CQC reports to the Government Representative.

#### 1.5.1.5.4 Safety Personnel Training Requirements for Dredging

- a. The SSHO, Alternate SSHO, and Designated Representatives for dredging contracts shall take either the OSHA 30-hour Construction Safety Course or an equivalent 30 hours of formal safety and health training covering the subjects of the OSHA 30-hour Course (see EM 385-1-1 Appendix A, paragraph 4.b) applicable to dredging work and given by qualified instructors.
- b. The SSHOs shall also have taken 24 hours of formal classroom or online safety and health related coursework in the past four (4) years. Hours spent as an instructor in such courses will be considered the same as attending them, but each course only gets credit once (i.e., Instructing a 1-hour asbestos awareness course 5 times in the past 4 years provides one hour credit for training).
- c. The SSHO, Alternate SSHO, and Designated Representatives shall have a minimum of three years' continuous experience within the past 5 years in supervising/ managing dredging, marine or land-based construction, work managing safety programs or processes, or conducting hazard analyses and developing controls in activities or environments with similar hazards. This is in lieu of the construction experience required by paragraph 01.A.17.b, EM 385-1-1.

#### 1.5.1.6 Crane Operators/Riggers

Provide Operators meeting the requirements in EM 385-1-1, Section 15.B for Riggers and Section 16.B for Crane Operators. In addition, for mobile cranes with Original Equipment Manufacturer (OEM) rated capacities of 50,000 pounds or greater, designate crane operators qualified by a source that qualifies crane operators (i.e., union, a government agency, or an organization that tests and qualifies crane operators). Provide proof of current qualification.

#### 1.5.2 Personnel Duties

##### 1.5.2.1 Duties of the Site Safety and Health Officer (SSHO)

The SSHO must:

- a. Conduct daily safety and health inspections and maintain a written log which includes area/operation inspected, date of inspection, identified hazards, recommended corrective actions, estimated and actual dates of corrections. Attach safety inspection logs to the Contractors' daily quality control report.
- b. Conduct mishap investigations and complete required accident reports. Report mishaps and near misses.
- c. Use and maintain OSHA's Form 300 to log work-related injuries and illnesses occurring on the project site for Prime Contractors and subcontractors, and make available to the Contracting Officer upon request. Post and maintain the Form 300A on the site Safety Bulletin Board.
- d. Maintain applicable safety reference material on the job site.
- e. Attend the pre-construction conference, pre-work meetings including preparatory meetings, and periodic in-progress meetings.
- f. Review the APP and AHAs for compliance with EM 385-1-1, and approve, sign, implement and enforce them.
- g. Establish a Safety and Occupational Health (SOH) Deficiency Tracking System that lists and monitors outstanding deficiencies until resolution.
- h. Ensure subcontractor compliance with safety and health requirements.
- i. Maintain a list of hazardous chemicals on site and their material Safety Data Sheets (SDS).
- j. Maintain a weekly list of high hazard activities involving energy, equipment, excavation, entry into confined space, and elevation, and be prepared to discuss details during QC Meetings.
- k. Provide and keep a record of site safety orientation and indoctrination for Contractor employees, subcontractor employees, and site visitors.

Superintendent, QC Manager, and SSHO are subject to dismissal if the above duties are not being effectively carried out. If Superintendent, QC Manager, or SSHO are dismissed, project work will be stopped and will not

be allowed to resume until a suitable replacement is approved and the above duties are again being effectively carried out.

### 1.5.3 Meetings

#### 1.5.3.1 Preconstruction Conference

- a. Contractor representatives who have a responsibility or significant role in accident prevention on the project must attend the preconstruction conference. This includes the project superintendent, Site Safety and Occupational Health officer, quality control manager, or any other assigned safety and health professionals who participated in the development of the APP (including the Activity Hazard Analyses (AHAs) and special plans, program and procedures associated with it).
- b. Discuss the details of the submitted APP to include incorporated plans, programs, procedures and a listing of anticipated AHAs that will be developed and implemented during the performance of the contract. This list of proposed AHAs will be reviewed at the conference and an agreement will be reached between the Contractor and the Contracting Officer as to which phases will require an analysis. In addition, establish a schedule for the preparation, submittal, and Government review of AHAs to preclude project delays.
- c. Deficiencies in the submitted APP, identified during the Contracting Officer's review, must be corrected, and the APP re-submitted for review prior to the start of construction. Work is not permitted to begin until an APP is established that is acceptable to the Contracting Officer.

#### 1.5.3.2 Safety Meetings

Conduct safety meetings to review past activities, plan for new or changed operations, review pertinent aspects of appropriate AHA (by trade), establish safe working procedures for anticipated hazards, and provide pertinent Safety and Occupational Health (SOH) training and motivation. Conduct meetings at least once a month for all supervisors on the project location. The SSHO, supervisors, or foremen must conduct meetings at least once a week for the trade workers. Document meeting minutes to include the date, persons in attendance, subjects discussed, and names of individual(s) who conducted the meeting. Maintain documentation on-site and furnish copies to the Contracting Officer on request. Notify the Contracting Officer of all scheduled meetings 7 calendar days in advance.

### 1.6 ACCIDENT PREVENTION PLAN (APP)

A qualified person must prepare the written site-specific APP. Prepare the APP in accordance with the format and requirements of EM 385-1-1, Appendix A, and as supplemented herein. Cover all paragraph and subparagraph elements in EM 385-1-1, Appendix A. The APP must be job-specific and address any unusual or unique aspects of the project or activity for which it is written. The APP must interface with the Contractor's overall safety and health program referenced in the APP in the applicable APP element, and made site-specific. Describe the methods to evaluate past safety performance of potential subcontractors in the selection process. Also, describe innovative methods used to ensure and monitor safe work practices of subcontractors. The Government considers the Prime Contractor to be the "controlling authority" for all work site safety and health of the subcontractors. Contractors are responsible for informing their

subcontractors of the safety provisions under the terms of the contract and the penalties for noncompliance, coordinating the work to prevent one craft from interfering with or creating hazardous working conditions for other crafts, and inspecting subcontractor operations to ensure that accident prevention responsibilities are being carried out. The APP must be signed by an officer of the firm (Prime Contractor senior person), the individual preparing the APP, the on-site superintendent, the designated SSHO, the Contractor Quality Control Manager, and any designated Certified Safety Professional (CSP) or Certified Industrial Hygienist (CIH). The SSHO must provide and maintain the APP and a log of signatures by each subcontractor foreman, attesting that they have read and understand the APP, and make the APP and log available on-site to the Contracting Officer. If English is not the foreman's primary language, the Prime Contractor must provide an interpreter.

Submit the APP to the Contracting Officer 15 calendar days prior to the date of the preconstruction conference for acceptance. Work cannot proceed without an accepted APP. Once reviewed and accepted by the Contracting Officer, the APP and attachments will be enforced as part of the contract. Disregarding the provisions of this contract or the accepted APP is cause for stopping of work, at the discretion of the Contracting Officer, until the matter has been rectified. Continuously review and amend the APP, as necessary, throughout the life of the contract. Changes to the accepted APP must be made with the knowledge and concurrence of the Contracting Officer, project superintendent, SSHO and Quality Control Manager. Incorporate unusual or high-hazard activities not identified in the original APP as they are discovered. Should any severe hazard exposure (i.e. imminent danger) become evident, stop work in the area, secure the area, and develop a plan to remove the exposure and control the hazard. Notify the Contracting Officer within 24 hours of discovery. Eliminate and remove the hazard. In the interim, take all necessary action to restore and maintain safe working conditions in order to safeguard onsite personnel, visitors, the public (as defined by ASSE/SAFE A10.34), and the environment.

#### 1.6.1 Names and Qualifications

Provide plans in accordance with the requirements outlined in Appendix A of EM 385-1-1, including the following:

- a. Names and qualifications (resumes including education, training, experience and certifications) of site safety and health personnel designated to perform work on this project to include the designated Site Safety and Health Officer and other competent and qualified personnel to be used. Specify the duties of each position.
- b. Qualifications of competent and of qualified persons. As a minimum, designate and submit qualifications of competent persons for each of the following major areas: excavation; scaffolding; fall protection; hazardous energy; confined space; health hazard recognition, evaluation and control of chemical, physical and biological agents; and personal protective equipment and clothing to include selection, use and maintenance.

#### 1.6.2 Plans

Provide plans in the APP in accordance with the requirements outlined in Appendix A of EM 385-1-1, including the following:

#### 1.6.2.1 Confined Space Entry Plan

Develop a confined or enclosed space entry plan in accordance with EM 385-1-1, applicable OSHA standards 29 CFR 1910, 29 CFR 1915, and 29 CFR 1926, OSHA Directive CPL 2.100, and any other federal, state and local regulatory requirements identified in this contract. Identify the qualified person's name and qualifications, training, and experience. Delineate the qualified person's authority to direct work stoppage in the event of hazardous conditions. Include procedure for rescue by contractor personnel and the coordination with emergency responders. (If there is no confined space work, include a statement that no confined space work exists and none will be created.)

#### 1.6.2.2 Standard Lift Plan (SLP)

Plan lifts to avoid situations where the operator cannot maintain safe control of the lift. Prepare a written SLP in accordance with EM 385-1-1, Section 16.A.03, using Form 16-2 for every lift or series of lifts (if duty cycle or routine lifts are being performed). The SLP must be developed, reviewed and accepted by all personnel involved in the lift in conjunction with the associated AHA. Signature on the AHA constitutes acceptance of the plan. Maintain the SLP on the LHE for the current lift(s) being made. Maintain historical SLPs for a minimum of 3 months.

#### 1.6.2.3 Critical Lift Plan - Crane or Load Handling Equipment

Provide a Critical Lift Plan as required by EM 385-1-1, Section 16.H.01, using Form 16-3. Critical lifts require detailed planning and additional or unusual safety precautions. Develop and submit a critical lift plan to the Contracting Officer 30 calendar days prior to critical lift. Comply with load testing requirements in accordance with EM 385-1-1, Section 16.F.03.

In addition to the requirements of EM 385-1-1, Section 16.H.02, the critical lift plan must include the following:

- a. For lifts of personnel, demonstrate compliance with the requirements of 29 CFR 1926.1400 and EM 385-1-1, Section 16.T.
- b. For barge mounted mobile cranes, provide a Naval Architecture Analysis and include an LHE Manufacturer's Floating Service Load Chart in accordance with the criteria from the selected standard in EM 385-1-1, Section 16.L.02. The Floating Service Load Chart must provide a table of rated load versus boom angle and radius. The Floating Service Load Chart must also provide the maximum allowable machine list and trim associated with the tabular loads and radii provided. If the Manufacturer's Floating Service Load Chart is not available, a floating service load chart may be developed and provided by a qualified Registered Professional Engineer (RPE), competent in the field of floating cranes. The Load Chart must be in accordance with the criteria from the selected standard in EM 385-1-1, Section 16.L; provide a table of rated load versus boom angle and radius; provide the maximum allowable machine list and machine trim associated with the tabular loads and radii provided; and be stamped by a RPE qualified and competent in the field of floating cranes. The RPE, competent in the field of floating cranes must stamp and certify (sign) that the Naval Architectural Analysis (NAA) meets the requirements of EM 385-1-1, Section 16.L.03.



- c. Multi-purpose machines, material handling equipment, and construction equipment used to lift loads that are suspended by rigging gear, require proof of authorization from the machine OEM that the machine is capable of making lifts of loads suspended by rigging equipment. Demonstrate that the operator is properly trained and that the equipment is properly configured to make such lifts and is equipped with a load chart.

#### 1.6.2.4 Fall Protection and Prevention (FP&P) Plan

The plan must comply with the requirements of EM 385-1-1, Section 21.D and ASSE/SAFE Z359.2, be site specific, and address all fall hazards in the work place and during different phases of construction. Address how to protect and prevent workers from falling to lower levels when they are exposed to fall hazards above 6 feet. A competent person or qualified person for fall protection must prepare and sign the plan documentation. Include fall protection and prevention systems, equipment and methods employed for every phase of work, roles and responsibilities, assisted rescue, self-rescue and evacuation procedures, training requirements, and monitoring methods. Review and revise, as necessary, the Fall Protection and Prevention Plan documentation as conditions change, but at a minimum every six months, for lengthy projects, reflecting any changes during the course of construction due to changes in personnel, equipment, systems or work habits. Keep and maintain the accepted Fall Protection and Prevention Plan documentation at the job site for the duration of the project. Include the Fall Protection and Prevention Plan documentation in the Accident Prevention Plan (APP).

#### 1.6.2.5 Rescue and Evacuation Plan

Provide a Rescue and Evacuation Plan in accordance with EM 385-1-1 Section 21.N and ASSE/SAFE Z359.2, and include in the FP&P Plan and as part of the APP. Include a detailed discussion of the following: methods of rescue; methods of self-rescue; equipment used; training requirement; specialized training for the rescuers; procedures for requesting rescue and medical assistance; and transportation routes to a medical facility.

#### 1.6.2.6 Hazardous Energy Control Program (HECP)

Develop a HECP in accordance with EM 385-1-1 Section 12, 29 CFR 1910.147, 29 CFR 1910.333, 29 CFR 1915.89, ASSE/SAFE Z244.1, and ASSE/SAFE A10.44. Submit this HECP as part of the Accident Prevention Plan (APP). Conduct a preparatory meeting and inspection with all effected personnel to coordinate all HECP activities. Document this meeting and inspection in accordance with EM 385-1-1, Section 12.A.02. Ensure that each employee is familiar with and complies with these procedures.

#### 1.7 ACTIVITY HAZARD ANALYSIS (AHA)

Before beginning each activity, task or Definable Feature of Work (DFOW) involving a type of work presenting hazards not experienced in previous project operations, or where a new work crew or subcontractor is to perform the work, the Contractor(s) performing that work activity must prepare an AHA. AHAs must be developed by the Prime Contractor, subcontractor, or supplier performing the work, and provided for Prime Contractor review and approval before submitting to the Contracting Officer. AHAs must be signed by the SSHO, Superintendent, QC Manager and the subcontractor Foreman performing the work. Format the AHA in accordance with EM 385-1-1, Section 1 or as directed by the Contracting Officer. Submit the AHA for review at

least 15 working days prior to the start of each activity task, or DFOW. The Government reserves the right to require the Contractor to revise and resubmit the AHA if it fails to effectively identify the work sequences, specific anticipated hazards, site conditions, equipment, materials, personnel and the control measures to be implemented.

AHAs must identify competent persons required for phases involving high risk activities, including confined entry, crane and rigging, excavations, trenching, electrical work, fall protection, and scaffolding.

#### 1.7.1 AHA Management

Review the AHA list periodically (at least monthly) at the Contractor supervisory safety meeting, and update as necessary when procedures, scheduling, or hazards change. Use the AHA during daily inspections by the SSHO to ensure the implementation and effectiveness of the required safety and health controls for that work activity.

#### 1.7.2 AHA Signature Log

Each employee performing work as part of an activity, task or DFOW must review the AHA for that work and sign a signature log specifically maintained for that AHA prior to starting work on that activity. The SSHO must maintain a signature log on site for every AHA. Provide employees whose primary language is other than English, with an interpreter to ensure a clear understanding of the AHA and its contents.

### 1.8 DISPLAY OF SAFETY INFORMATION

#### 1.8.1 Safety Bulletin Board

Within one calendar day after commencement of work, erect a safety bulletin board at the job site. Where size, duration, or logistics of project do not facilitate a bulletin board, an alternative method, acceptable to the Contracting Officer, that is accessible and includes all mandatory information for employee and visitor review, may be deemed as meeting the requirement for a bulletin board. Include and maintain information on safety bulletin board as required by EM 385-1-1, Section 01.A.07. Additional items required to be posted include:

- a. Confined space entry permit.
- b. Hot work permit.

#### 1.8.2 Safety and Occupational Health (SOH) Deficiency Tracking System

Establish a SOH deficiency tracking system that lists and monitors the status of SOH deficiencies in chronological order. Use the tracking system to evaluate the effectiveness of the APP. A monthly evaluation of the data must be discussed in the QC or SOH meeting with everyone on the project. The list must be posted on the project bulletin board and updated daily, and provide the following information:

- a. Date deficiency identified;
- b. Description of deficiency;
- c. Name of person responsible for correcting deficiency;

d. Projected resolution date;

e. Date actually resolved.

#### 1.9 SITE SAFETY REFERENCE MATERIALS

Maintain safety-related references applicable to the project, including those listed in paragraph REFERENCES. Maintain applicable equipment manufacturer's manuals.

#### 1.10 EMERGENCY MEDICAL TREATMENT

Contractors must arrange for their own emergency medical treatment. Government has no responsibility to provide emergency medical treatment.

#### 1.11 NOTIFICATIONS and REPORTS

##### 1.11.1 Mishap Notification

Notify the Contracting Officer as soon as practical, but no more than twenty-four hours, after any mishaps, including recordable accidents, incidents, and near misses, as defined in EM 385-1-1 Appendix Q, any report of injury, illness, load handling equipment (LHE) or rigging mishaps, or any property damage. The Contractor is responsible for obtaining appropriate medical and emergency assistance and for notifying fire, law enforcement, and regulatory agencies. Immediate reporting is required for electrical mishaps, to include Arc Flash; shock; uncontrolled release of hazardous energy (includes electrical and non-electrical); load handling equipment or rigging; fall from height (any level other than same surface); and underwater diving. These mishaps must be investigated in depth to identify all causes and to recommend hazard control measures.

Within notification include Contractor name; contract title; type of contract; name of activity, installation or location where accident occurred; date and time of accident; names of personnel injured; extent of property damage, if any; extent of injury, if known, and brief description of accident (for example, type of construction equipment used and PPE used). Preserve the conditions and evidence on the accident site until the Government investigation team arrives on-site and Government investigation is conducted. Assist and cooperate fully with the Government's investigation(s) of any mishap.

##### 1.11.2 Accident Reports

- a. Conduct an accident investigation for recordable injuries and illnesses, property damage, and near misses as defined in EM 385-1-1, to establish the root cause(s) of the accident. Complete the applicable USACE Accident Report Form 3394, and provide the report to the Contracting Officer within 5 calendar day(s) of the accident. The Contracting Officer will provide copies of any required or special forms.
- b. Near Misses: Report all "Near Misses" to the GDA, using local mishap reporting procedures, within 24 hrs. The Contracting Officer will provide the Contractor the required forms. Near miss reports are considered positive and proactive Contractor safety management actions.
- c. Conduct an accident investigation for any load handling equipment accident (including rigging gear accidents) to establish the root

cause(s) of the accident. Complete the LHE Accident Report (Crane and Rigging Gear) form and provide the report to the Contracting Officer within 30 calendar days of the accident. Do not proceed with crane operations until cause is determined and corrective actions have been implemented to the satisfaction of the Contracting Officer. The Contracting Officer will provide a blank copy of the accident report form.

#### 1.11.3 LHE Inspection Reports

Submit LHE inspection reports required in accordance with EM 385-1-1 and as specified herein with Daily Reports of Inspections.

#### 1.11.4 Certificate of Compliance and Pre-lift Plan/Checklist for LHE and Rigging

Provide a FORM 16-1 Certificate of Compliance for LHE entering an activity under this contract and in accordance with EM 385-1-1. Post certifications on the crane.

Develop a Standard Lift Plan (SLP) in accordance with EM 385-1-1, Section 16.H.03 using Form 16-2 Standard Pre-Lift Crane Plan/Checklist for each lift planned. Submit SLP to the Contracting Officer for approval within 15 calendar days in advance of planned lift.

#### 1.12 HOT WORK

##### 1.12.1 Permit and Personnel Requirements

Submit and obtain a written permit prior to performing "Hot Work" (i.e. welding or cutting) or operating other flame-producing/spark producing devices, from the Fire Marshall. A permit is required from the Explosives Safety Office for work in and around where explosives are processed, stored, or handled. CONTRACTORS ARE REQUIRED TO MEET ALL CRITERIA BEFORE A PERMIT IS ISSUED. Provide at least two 20 pound 4A:20 BC rated extinguishers for normal "Hot Work". The extinguishers must be current inspection tagged, and contain an approved safety pin and tamper resistant seal. It is also mandatory to have a designated FIRE WATCH for any "Hot Work" done at this activity. The Fire Watch must be trained in accordance with NFPA 51B and remain on-site for a minimum of one hour after completion of the task or as specified on the hot work permit.

When starting work in the facility, require personnel to familiarize themselves with the location of the nearest fire alarm boxes and place in memory the emergency Fire Marshall's phone number. REPORT ANY FIRE, NO MATTER HOW SMALL, TO THE RESPONSIBLE FIRE MARSHALL IMMEDIATELY.

##### 1.12.2 Work Around Flammable Materials

Obtain services from a NFPA Certified Marine Chemist for "HOT WORK" within or around flammable materials (such as fuel systems or welding/cutting on fuel pipes) or confined spaces (such as sewer wet wells, manholes, or vaults) that have the potential for flammable or explosive atmospheres.

Whenever these materials, except beryllium (Be) and chromium (VI), are encountered in indoor operations, local mechanical exhaust ventilation systems that are sufficient to reduce and maintain personal exposures to within acceptable limits must be used and maintained in accordance with manufacturer's instruction and supplemented by exceptions noted in

EM 385-1-1, Section 06.H

#### 1.13 CONFINED SPACE ENTRY REQUIREMENTS.

Confined space entry must comply with Section 34 of EM 385-1-1, OSHA 29 CFR 1926, OSHA 29 CFR 1910, OSHA 29 CFR 1910.146, and OSHA Directive CPL 2.100. Any potential for a hazard in the confined space requires a permit system to be used.

##### 1.13.1 Entry Procedures

Prohibit entry into a confined space by personnel for any purpose, including hot work, until the qualified person has conducted appropriate tests to ensure the confined or enclosed space is safe for the work intended and that all potential hazards are controlled or eliminated and documented. Comply with EM 385-1-1, Section 34 for entry procedures. Hazards pertaining to the space must be reviewed with each employee during review of the AHA.

##### 1.13.2 Forced Air Ventilation

Forced air ventilation is required for all confined space entry operations and the minimum air exchange requirements must be maintained to ensure exposure to any hazardous atmosphere is kept below its action level.

##### 1.13.3 Sewer Wet Wells

Sewer wet wells require continuous atmosphere monitoring with audible alarm for toxic gas detection.

##### 1.13.4 Rescue Procedures and Coordination with Local Emergency Responders

Develop and implement an on-site rescue and recovery plan and procedures. The rescue plan must not rely on local emergency responders for rescue from a confined space.

#### 1.14 DIVE SAFETY REQUIREMENTS

Develop a Dive Operations Plan, AHA, emergency management plan, and personnel list that includes qualifications, for each separate diving operation. Submit these documents to the District Dive Coordinator (DDC) for review and acceptance at least 15 working days prior to commencement of diving operations. These documents must be at the diving location at all times. Provide each of these documents as a part of the project file.

#### 1.15 SEVERE STORM PLAN

In the event of a severe storm warning, the Contractor must:

- a. Secure outside equipment and materials and place materials that could be damaged in protected areas.
- b. Check surrounding area, including roof, for loose material, equipment, debris, and other objects that could be blown away or against existing facilities.
- c. Ensure that temporary erosion controls are adequate.

## PART 2 PRODUCTS

Not used.

## PART 3 EXECUTION

### 3.1 CONSTRUCTION AND OTHER WORK

Comply with EM 385-1-1, NFPA 70, NFPA 70E, NFPA 241, the APP, the AHA, Federal and State OSHA regulations, and other related submittals and activity fire and safety regulations. The most stringent standard prevails.

PPE is governed in all areas by the nature of the work the employee is performing. Use personal hearing protection at all times in designated noise hazardous areas or when performing noise hazardous tasks. Safety glasses must be worn or carried/available on each person. Mandatory PPE includes:

- a. Hard Hat
- b. Long Pants
- c. Appropriate Safety Shoes
- d. Appropriate Class Reflective Vests

#### 3.1.1 Worksite Communication

Employees working alone in a remote location or away from other workers must be provided an effective means of emergency communications (i.e., cellular phone, two-way radios, land-line telephones or other acceptable means). The selected communication must be readily available (easily within the immediate reach) of the employee and must be tested prior to the start of work to verify that it effectively operates in the area/environment. An employee check-in/check-out communication procedure must be developed to ensure employee safety.

#### 3.1.2 Hazardous Material Exclusions

Notwithstanding any other hazardous material used in this contract, radioactive materials or instruments capable of producing ionizing/non-ionizing radiation (with the exception of radioactive material and devices used in accordance with EM 385-1-1 such as nuclear density meters for compaction testing and laboratory equipment with radioactive sources) as well as materials which contain asbestos, mercury or polychlorinated biphenyls, di-isocyanates, lead-based paint, and hexavalent chromium, are prohibited. The Contracting Officer, upon written request by the Contractor, may consider exceptions to the use of any of the above excluded materials. Low mercury lamps used within fluorescent lighting fixtures are allowed as an exception without further Contracting Officer approval. Notify the Radiation Safety Officer (RSO) prior to excepted items of radioactive material and devices being brought on base.

### 3.2 PRE-OUTAGE COORDINATION MEETING

Apply for utility outages at least 15 days in advance. As a minimum, the request must include the location of the outage, utilities being affected, duration of outage and any necessary sketches. Special requirements for electrical outage requests are contained elsewhere in this specification

section. Once approved, and prior to beginning work on the utility system requiring shut down, attend a pre-outage coordination meeting with the Contracting Officer and the Public Utilities representative to review the scope of work and the lock-out/tag-out procedures for worker protection. No work will be performed on energized electrical circuits unless proof is provided that no other means exist.

### 3.3 CONTROL OF HAZARDOUS ENERGY (LOCKOUT/TAGOUT)

Provide and operate a Hazardous Energy Control Program (HECP) in accordance with EM 385-1-1 Section 12, 29 CFR 1910.333, 29 CFR 1915.89, and paragraph HAZARDOUS ENERGY CONTROL PROGRAM (HECP).

### 3.4 FALL PROTECTION PROGRAM

Establish a fall protection program, for the protection of all employees exposed to fall hazards. Within the program include company policy, identify roles and responsibilities, education and training requirements, fall hazard identification, prevention and control measures, inspection, storage, care and maintenance of fall protection equipment and rescue and evacuation procedures in accordance with ASSE/SAFE Z359.2 and EM 385-1-1, Sections 21.A and 21.D.

#### 3.4.1 Training

Institute a fall protection training program. As part of the Fall Protection Program, provide training for each employee who might be exposed to fall hazards. Provide training by a competent person for fall protection in accordance with EM 385-1-1, Section 21.C. Document training and practical application of the competent person in accordance with EM 385-1-1, Section 21.C.04 and ASSE/SAFE Z359.2 in the AHA.

#### 3.4.2 Fall Protection Equipment and Systems

Enforce use of personal fall protection equipment and systems designated (to include fall arrest, restraint, and positioning) for each specific work activity in the Site Specific Fall Protection and Prevention Plan and AHA at all times when an employee is exposed to a fall hazard. Protect employees from fall hazards as specified in EM 385-1-1, Section 21.

Provide personal fall protection equipment, systems, subsystems, and components that comply with EM 385-1-1 Section 21.I, 29 CFR 1926.500 Subpart M, ASSE/SAFE Z359.0, ASSE/SAFE Z359.1, ASSE/SAFE Z359.2, ASSE/SAFE Z359.3, ASSE/SAFE Z359.4, ASSE/SAFE Z359.6, ASSE/SAFE Z359.7, ASSE/SAFE Z359.11, ASSE/SAFE Z359.12, ASSE/SAFE Z359.13, ASSE/SAFE Z359.14, and ASSE/SAFE Z359.15.

##### 3.4.2.1 Additional Personal Fall Protection

In addition to the required fall protection systems, other protection such as safety skiffs, personal floatation devices, and life rings, are required when working above or next to water in accordance with EM 385-1-1, Sections 21.0 through 21.0.06. Personal fall protection systems and equipment are required when working from an articulating or extendible boom, swing stages, or suspended platform. In addition, personal fall protection systems are required when operating other equipment such as scissor lifts. The need for tying-off in such equipment is to prevent ejection of the employee from the equipment during raising, lowering, travel, or while performing work.

#### 3.4.2.2 Personal Fall Protection Harnesses

Only a full-body harness with a shock-absorbing lanyard or self-retracting lanyard is an acceptable personal fall arrest body support device. The use of body belts is not acceptable. Harnesses must have a fall arrest attachment affixed to the body support (usually a Dorsal D-ring) and specifically designated for attachment to the rest of the system. Snap hooks and carabiners must be self-closing and self-locking, capable of being opened only by at least two consecutive deliberate actions and have a minimum gate strength of 3,600 lbs in all directions. Use webbing, straps, and ropes made of synthetic fiber. The maximum free fall distance when using fall arrest equipment must not exceed 6 feet, unless the proper energy absorbing lanyard is used. Always take into consideration the total fall distance and any swinging of the worker (pendulum-like motion), that can occur during a fall, when attaching a person to a fall arrest system. All full body harnesses must be equipped with Suspension Trauma Preventers such as stirrups, relief steps, or similar in order to provide short-term relief from the effects of orthostatic intolerance in accordance with EM 385-1-1, Section 21.I.06.

#### 3.4.3 Horizontal Lifelines (HLL)

Provide HLL in accordance with EM 385-1-1, Section 21.I.08.d.2. Commercially manufactured horizontal lifelines (HLL) must be designed, installed, certified and used, under the supervision of a qualified person, for fall protection as part of a complete fall arrest system which maintains a safety factor of 2 (29 CFR 1926.500). The competent person for fall protection may (if deemed appropriate by the qualified person) supervise the assembly, disassembly, use and inspection of the HLL system under the direction of the qualified person. Locally manufactured HLLs are not acceptable unless they are custom designed for limited or site specific applications by a Registered Professional Engineer who is qualified in designing HLL systems.

#### 3.4.4 Guardrails and Safety Nets

Design, install and use guardrails and safety nets in accordance with EM 385-1-1, Section 21.F.01 and 29 CFR 1926 Subpart M.

#### 3.4.5 Rescue and Evacuation Plan and Procedures

When personal fall arrest systems are used, ensure that the mishap victim can self-rescue or can be rescued promptly should a fall occur. Prepare a Rescue and Evacuation Plan and include a detailed discussion of the following: methods of rescue; methods of self-rescue or assisted-rescue; equipment used; training requirement; specialized training for the rescuers; procedures for requesting rescue and medical assistance; and transportation routes to a medical facility. Include the Rescue and Evacuation Plan within the Activity Hazard Analysis (AHA) for the phase of work, in the Fall Protection and Prevention (FP&P) Plan, and the Accident Prevention Plan (APP). The plan must comply with the requirements of EM 385-1-1, ASSE/SAFE Z359.2, and ASSE/SAFE Z359.4.

### 3.5 EQUIPMENT

#### 3.5.1 Material Handling Equipment (MHE)

- a. Material handling equipment such as forklifts must not be modified with



work platform attachments for supporting employees unless specifically delineated in the manufacturer's printed operating instructions. Material handling equipment fitted with personnel work platform attachments are prohibited from traveling or positioning while personnel are working on the platform.

- b. The use of hooks on equipment for lifting of material must be in accordance with manufacturer's printed instructions. Material Handling Equipment Operators must be trained in accordance with OSHA 29 CFR 1910, Subpart N.
- c. Operators of forklifts or power industrial trucks must be licensed in accordance with OSHA.

### 3.5.2 Load Handling Equipment (LHE)

- a. Equip cranes and derricks as specified in EM 385-1-1, Section 16.
- b. Notify the Contracting Officer 15 working days in advance of any LHE entering the activity, in accordance with EM 385-1-1, Section 16.A.02, so that necessary quality assurance spot checks can be coordinated. Contractor's operator must remain with the crane during the spot check. Rigging gear must comply with OSHA and ASME B30.9 Standards.
- c. Comply with the LHE manufacturer's specifications and limitations for erection and operation of cranes and hoists used in support of the work. Perform erection under the supervision of a designated person (as defined in ASME B30.5). Perform all testing in accordance with the manufacturer's recommended procedures.
- d. Comply with ASME B30.5 for mobile and locomotive cranes, ASME B30.22 for articulating boom cranes, ASME B30.3 for construction tower cranes, ASME B30.8 for floating cranes and floating derricks, ASME B30.9 for slings, ASME B30.20 for below the hook lifting devices and ASME B30.26 for rigging hardware.
- e. Under no circumstance must a Contractor make a lift at or above 90 percent of the cranes rated capacity in any configuration.
- f. When operating in the vicinity of overhead transmission lines, operators and riggers must be alert to this special hazard and follow the requirements of EM 385-1-1 Section 11, and ASME B30.5 or ASME B30.22 as applicable.
- g. Do not use crane suspended personnel work platforms (baskets) unless the Contractor proves that using any other access to the work location would provide a greater hazard to the workers or is impossible. Do not lift personnel with a line hoist or friction crane. Additionally, submit a specific AHA for this work to the Contracting Officer. Ensure the activity and AHA are thoroughly reviewed by all involved personnel.
- h. Inspect, maintain, and recharge portable fire extinguishers as specified in NFPA 10, Standard for Portable Fire Extinguishers.
- i. All employees must keep clear of loads about to be lifted and of suspended loads.
- j. Use cribbing when performing lifts on outriggers.

- k. The crane hook/block must be positioned directly over the load. Side loading of the crane is prohibited.
- l. A physical barricade must be positioned to prevent personnel access where accessible areas of the LHE's rotating superstructure poses a risk of striking, pinching or crushing personnel.
- m. Maintain inspection records in accordance by EM 385-1-1, Section 16.D, including shift, monthly, and annual inspections, the signature of the person performing the inspection, and the serial number or other identifier of the LHE that was inspected. Records must be available for review by the Contracting Officer.
- n. Maintain written reports of operational and load testing in accordance with EM 385-1-1, Section 16.F, listing the load test procedures used along with any repairs or alterations performed on the LHE. Reports must be available for review by the Contracting Officer.
- o. Certify that all LHE operators have been trained in proper use of all safety devices (e.g. anti-two block devices).
- p. Take steps to ensure that wind speed does not contribute to loss of control of the load during lifting operations. At wind speeds greater than 20 mph, the operator, rigger and lift supervisor must cease all crane operations, evaluate conditions and determine if the lift may proceed. Base the determination to proceed or not on wind calculations per the manufacturer and a reduction in LHE rated capacity if applicable. Include this maximum wind speed determination as part of the activity hazard analysis plan for that operation.

### 3.5.3 Machinery and Mechanized Equipment

- a. Proof of qualifications for operator must be kept on the project site for review.
- b. Manufacture specifications or owner's manual for the equipment must be on-site and reviewed for additional safety precautions or requirements that are sometimes not identified by OSHA or USACE EM 385-1-1. Incorporate such additional safety precautions or requirements into the AHAs.

## 3.6 ELECTRICAL

Perform electrical work in accordance with EM 385-1-1, Appendix A, Sections 11 and 12.

### 3.6.1 Conduct of Electrical Work

As delineated in EM 385-1-1, electrical work is to be conducted in a de-energized state unless there is no alternative method for accomplishing the work. In those cases obtain an energized work permit from the Contracting Officer. The energized work permit application must be accompanied by the AHA and a summary of why the equipment/circuit needs to be worked energized. Underground electrical spaces must be certified safe for entry before entering to conduct work. Cables that will be cut must be positively identified and de-energized prior to performing each cut. Attach temporary grounds in accordance with ASTM F855 and IEEE 1048. Perform all high voltage cable cutting remotely using hydraulic cutting tool. When racking in or live switching of circuit breakers, no additional

person other than the switch operator is allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of electrical outages clear of any energized electrical sources is the preferred method.

When working in energized substations, only qualified electrical workers are permitted to enter. When work requires work near energized circuits as defined by NFPA 70, high voltage personnel must use personal protective equipment that includes, as a minimum, electrical hard hat, safety shoes, insulating gloves and electrical arc flash protection for personnel as required by NFPA 70E. Insulating blankets, hearing protection, and switching suits may also be required, depending on the specific job and as delineated in the Contractor's AHA. Ensure that each employee is familiar with and complies with these procedures and 29 CFR 1910.147.

### 3.6.2 Qualifications

Electrical work must be performed by QP personnel with verifiable credentials who are familiar with applicable code requirements. Verifiable credentials consist of State, National and Local Certifications or Licenses that a Master or Journeyman Electrician may hold, depending on work being performed, and must be identified in the appropriate AHA. Journeyman/Apprentice ratio must be in accordance with State, Local and Host Nation requirements applicable to where work is being performed.

### 3.6.3 Arc Flash

Conduct a hazard analysis/arc flash hazard analysis whenever work on or near energized parts greater than 50 volts is necessary, in accordance with NFPA 70E.

All personnel entering the identified arc flash protection boundary must be QPs and properly trained in NFPA 70E requirements and procedures. Unless permitted by NFPA 70E, no Unqualified Person is permitted to approach nearer than the Limited Approach Boundary of energized conductors and circuit parts. Training must be administered by an electrically qualified source and documented.

### 3.6.4 Grounding

Ground electrical circuits, equipment and enclosures in accordance with NFPA 70 and IEEE C2 to provide a permanent, continuous and effective path to ground unless otherwise noted by EM 385-1-1.

Check grounding circuits to ensure that the circuit between the ground and a grounded power conductor has a resistance low enough to permit sufficient current flow to allow the fuse or circuit breaker to interrupt the current.

### 3.6.5 Testing

Temporary electrical distribution systems and devices must be inspected, tested and found acceptable for Ground-Fault Circuit Interrupter (GFCI) protection, polarity, ground continuity, and ground resistance before initial use, before use after modification and at least monthly. Monthly inspections and tests must be maintained for each temporary electrical distribution system, and signed by the electrical CP or QP.

-- End of Section --

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SECTION 01 42 00

SOURCES FOR REFERENCE PUBLICATIONS

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PART 1 GENERAL

1.1 REFERENCES

Various publications are referenced in other sections of the specifications to establish requirements for the work. These references are identified in each section by document number, date and title. The document number used in the citation is the number assigned by the standards producing organization (e.g. ASTM B564 Standard Specification for Nickel Alloy Forgings). However, when the standards producing organization has not assigned a number to a document, an identifying number has been assigned for reference purposes.

1.2 ORDERING INFORMATION

The addresses of the standards publishing organizations whose documents are referenced in other sections of these specifications are listed below, and if the source of the publications is different from the address of the sponsoring organization, that information is also provided.

AMERICAN SOCIETY OF SAFETY ENGINEERS (ASSE/SAFE)  
1800 East Oakton Street  
Des Plaines, IL 60018  
Ph: 847-699-2929  
Internet: <http://www.asse.org>

ASME INTERNATIONAL (ASME)  
Two Park Avenue, M/S 10E  
New York, NY 10016-5990  
Ph: 800-843-2763  
Fax: 973-882-1717  
E-mail: [customercare@asme.org](mailto:customercare@asme.org)  
Internet: <http://www.asme.org>

ASTM INTERNATIONAL (ASTM)  
100 Barr Harbor Drive, P.O. Box C700  
West Conshohocken, PA 19428-2959  
Ph: 877-909-2786  
Internet: <http://www.astm.org>

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)  
445 and 501 Hoes Lane  
Piscataway, NJ 08854-4141  
Ph: 732-981-0060 or 800-701-4333  
Fax: 732-562-9667  
E-mail: [onlinesupport@ieee.org](mailto:onlinesupport@ieee.org)  
Internet: <http://www.ieee.org>

NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)  
1 Batterymarch Park  
Quincy, MA 02169-7471

Ph: 617-770-3000  
Fax: 617-770-0700  
Internet: <http://www.nfpa.org>

U.S. ARMY CORPS OF ENGINEERS (USACE)  
CRD-C DOCUMENTS available on Internet:  
[http://www.wbdg.org/ccb/browse\\_cat.php?c=68](http://www.wbdg.org/ccb/browse_cat.php?c=68)  
Order Other Documents from:  
USACE Publications Depot  
Attn: CEHEC-IM-PD  
2803 52nd Avenue  
Hyattsville, MD 20781-1102  
Ph: 301-394-0081  
Fax: 301-394-0084  
E-mail: [pubs-army@usace.army.mil](mailto:pubs-army@usace.army.mil)  
Internet: <http://www.publications.usace.army.mil/>  
or  
<http://www.hnc.usace.army.mil/Missions/Engineering/TECHINFO.aspx>

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)  
8601 Adelphi Road  
College Park, MD 20740-6001  
Ph: 866-272-6272  
Fax: 301-837-0483  
Internet: <http://www.archives.gov>  
Order documents from:  
Superintendent of Documents  
U.S. Government Printing Office (GPO)  
710 North Capitol Street, NW  
Washington, DC 20401  
Ph: 202-512-1800  
Fax: 202-512-2104  
E-mail: [contactcenter@gpo.gov](mailto:contactcenter@gpo.gov)  
Internet: <http://www.gpoaccess.gov>

## PART 2 PRODUCTS

Not used

## PART 3 EXECUTION

Not used

-- End of Section --

SECTION 01 45 00.00 10

QUALITY CONTROL  
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PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM INTERNATIONAL (ASTM)

ASTM D3740 (2012a) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction

ASTM E329 (2014a) Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program. Include all associated costs in the applicable Bid Schedule item.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Contractor Quality Control (CQC) Plan; G, OP

SD-06 Test Reports

Verification Statement

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

Establish and maintain an effective quality control (QC) system that complies with the Contract Clause titled "Inspection of Construction." QC

consist of plans, procedures, and organization necessary to produce an end product which complies with the Contract requirements. The QC system covers all construction operations, both onsite and offsite, and be keyed to the proposed construction sequence. The project superintendent will be held responsible for the quality of work and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the Contract. In this context the highest level manager responsible for the overall construction activities at the site, including quality and production is the project superintendent. The project superintendent maintains a physical presence at the site at all times and is responsible for all construction and related activities at the site, except as otherwise acceptable to the Contracting Officer.

### 3.2 CONTRACTOR QUALITY CONTROL (CQC) PLAN

The Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction" shall be submitted as a pre-construction submittal prior to the start of work. The Government will consider an interim plan for the first 15 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional work.

#### 3.2.1 Content of the CQC Plan

Include, as a minimum, the following to cover all construction-operations, both onsite and offsite, including work by subcontractors, fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff will implement the three phase control system for all aspects of the work specified. Include a CQC System Manager that reports to the project superintendent.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the Contract. Letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities will be issued by the CQC System Manager. Copies of these letters must be furnished to the Contracting Officer.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents. These procedures must be in accordance with Section 01 33 00 SUBMITTAL PROCEDURES.
- e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities approved by the Contracting Officer are required to be used.)



- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. Establish verification procedures that identified deficiencies have been corrected.
- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and is identified by different trades or disciplines, or it is work by the same trade in a different environment. Although each section of the specifications can generally be considered as a definable feature of work, there are frequently more than one definable features under a particular section. This list will be agreed upon during the coordination meeting.

### 3.2.2 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 the Contractor Quality Control(CQC) Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

### 3.2.3 Notification of Changes

After acceptance of the CQC Plan, notify the Contracting Officer in writing of any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

## 3.3 COORDINATION MEETING

After the Preconstruction Conference, before start of construction, and prior to acceptance by the Government of the CQC Plan, meet with the Contracting Officer and discuss the Contractor's quality control system. Submit the CQC Plan a minimum of 5 calendar days prior to the Coordination Meeting. During the meeting, a mutual understanding of the system details must 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 Quality Assurance. Minutes of the meeting will be prepared by the Government, signed by both the Contractor and the Contracting Officer and will become a part of the contract file. There can be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings or address deficiencies in the CQC system or procedures which can require corrective action by the Contractor.

## 3.4 QUALITY CONTROL ORGANIZATION

### 3.4.1 Personnel Requirements

The requirements for the CQC organization are a Safety and Health Manager, CQC System Manager, and sufficient number of additional qualified personnel to ensure safety and Contract compliance. The Safety and Health Manager

reports directly to a senior project (or corporate) official independent from the CQC System Manager. The Safety and Health Manager will also serve as a member of the CQC Staff. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed properly will also be included as part of the CQC organization. The Contractor's CQC staff maintains a presence at the site at all times during progress of the work and have complete authority and responsibility to take any action necessary to ensure Contract compliance. The CQC staff will be subject to acceptance by the Contracting Officer. Provide adequate office space, filing systems, and other resources as necessary to maintain an effective and fully functional CQC organization. Promptly complete and furnish all letters, material submittals, shop drawing submittals, schedules and all other project documentation to the CQC organization. The CQC organization is responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to the Contracting Officer.

#### 3.4.2 CQC System Manager

Identify as CQC System Manager an individual within the onsite work organization that is responsible for overall management of CQC and has the authority to act in all CQC matters for the Contractor. The CQC System Manager is required to be a construction person with a minimum of 5 years in related work. This CQC System Manager is on the site at all times during construction and is employed by the prime Contractor. The CQC System Manager must be assigned as CQC System Manager but may have duties as project superintendent in addition to quality control. Identify in the plan an alternate to serve in the event of the CQC System Manager's absence. The requirements for the alternate are the same as the CQC System Manager.

#### 3.4.3 Additional Requirement

In addition to the above experience and education requirements, the Contractor Quality Control(CQC) System Manager and Alternate CQC System Manager are required to have completed the Construction Quality Management (CQM) for Contractors course. If the CQC System Manager does not have a current certification, obtain the CQM for Contractors course certification within 90 days of award. This course is periodically offered by the Naval Facilities Engineering Command and the Army Corps of Engineers. Contact the Contracting Officer for information on the next scheduled class.

The Construction Quality Management Training certificate expires after 5 years. If the CQC System Manager's certificate has expired, retake the course to remain current.

#### 3.4.4 Organizational Changes

Maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

#### 3.5 SUBMITTALS AND DELIVERABLES

Submittals, if needed, have to comply with the requirements in Section 01 33 00 SUBMITTAL PROCEDURES. The CQC organization is responsible for certifying that all submittals and deliverables are in compliance with the contract requirements.

### 3.6 CONTROL

CQC is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control are required to be conducted by the CQC System Manager for each definable feature of the construction work as follows:

#### 3.6.1 Preparatory Phase

This phase is performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase includes:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. Make available during the preparatory inspection a copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field. Maintain and make available in the field for use by Government personnel until final acceptance of the work.
- b. Review of the Contract drawings.
- c. Check to assure that all materials and equipment have been tested, submitted, and approved.
- d. Review of provisions that have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the Contract.
- f. Examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. Review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- i. Check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government needs to be notified at least 24 hours in advance of beginning the preparatory control phase. Include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. Document the results of the preparatory phase actions by separate minutes prepared by the CQC System Manager and attach to the daily CQC report. Instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

### 3.6.2 Initial Phase

This phase is accomplished at the beginning of a definable feature of work. Accomplish the following:

- a. Check work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing are in compliance with the contract.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with required samples as appropriate.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government needs to be notified at least 24 hours in advance of beginning the initial phase for definable feature of work. Prepare separate minutes of this phase by the CQC System Manager and attach to the daily CQC report. Indicate the exact location of initial phase for definable feature of work for future reference and comparison with follow-up phases.
- g. The initial phase for each definable feature of work is repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

### 3.6.3 Follow-up Phase

Perform daily checks to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. Record the checks in the CQC documentation. Conduct final follow-up checks and correct all deficiencies prior to the start of additional features of work which may be affected by the deficient work. Do not build upon nor conceal non-conforming work.

### 3.6.4 Additional Preparatory and Initial Phases

Conduct additional preparatory and initial phases on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

## 3.7 TESTS

### 3.7.1 Testing Procedure

Perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, furnish to the Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and

acceptance tests when specified. Procure the services of a Corps of Engineers approved testing laboratory or establish an approved testing laboratory at the project site. 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 and test identification control number system, including all of the test documentation requirements, have been prepared.
- e. Record results of all tests taken, both passing and failing on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test. If approved by the Contracting Officer, actual test reports are submitted later with a reference to the test number and date taken. Provide an information copy of tests performed by an offsite or commercial test facility directly to the Contracting Officer. Failure to submit timely test reports as stated results in nonpayment for related work performed and disapproval of the test facility for this Contract.

### 3.7.2 Testing Laboratories

All testing laboratories must be validated by the USACE Material Testing Center (MTC) for the tests to be performed. Information on the USACE MTC with web-links to both a list of validated testing laboratories and for the laboratory inspection request for can be found at:

#### 3.7.2.1 Capability Check

The Government reserves 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. Laboratories utilized for testing soils are required to meet criteria detailed in ASTM D3740 and ASTM E329.

#### 3.7.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed a charge to be determined by the Contracting Officer's Representative to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the Contract amount due the Contractor.

### 3.7.3 Onsite Laboratory

The Government reserves 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 results at no additional cost to the Government.

### 3.8 COMPLETION INSPECTION

#### 3.8.1 Punch-Out Inspection

Conduct an inspection of the work by the CQC System Manager near the end of the work, or any increment of the work established by a time stated in the ADDITIONAL SPECIAL CONTRACT REQUIREMENTS Clause, "Commencement, Prosecution, and Completion of Work", or by the specifications. Prepare and include in the CQC documentation a punch list of items which do not conform to the approved drawings and specifications, as required by paragraph DOCUMENTATION. Include within the list of deficiencies the estimated date by which the deficiencies will be corrected. Make a second inspection with the CQC System Manager or staff to ascertain that all deficiencies have been corrected. Once this is accomplished, notify the Government that the facility is ready for the Government Pre-Final inspection.

#### 3.8.2 Pre-Final Inspection

The Government will perform the pre-final inspection to verify that the work has been completed in accordance with the contract requirements. A Government Pre-Final Punch List may be developed as a result of this inspection. Ensure that all items on this list have been corrected before notifying the Government, so that a Final inspection can be scheduled. Correct any items noted on the Pre-Final inspection in a timely manner. These inspections and any deficiency corrections required by this paragraph need to be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

#### 3.8.3 Final Acceptance Inspection

The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative are required to be in attendance at the final acceptance inspection. Additional Government personnel may also be in attendance. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the Pre-Final inspection. Notify the Contracting Officer at least 14 days prior to the final acceptance inspection and include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the Contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the Contract clause titled "Inspection of Construction".

### 3.9 DOCUMENTATION

#### 3.9.1 Quality Control Activities

Maintain current records providing factual evidence that required quality control activities and tests have been performed. Include in these records the work of subcontractors and suppliers on an acceptable form that includes, as a minimum, the following information:

- a. The name and area of responsibility of the Contractor/Subcontractor.

- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.
- d. Test and control activities performed with results and references to specifications/drawings requirements. Identify the control phase (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals and deliverables reviewed, with Contract reference, by whom, and action taken.
- g. Offsite surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and specifications.

### 3.9.2 Verification Statement

Indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. Cover both conforming and deficient features and include a statement that equipment and materials incorporated in the work and workmanship comply with the Contract. Furnish the original and one copy of these records in report form to the Government daily within 24 hours after the date covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, prepare and submit one report for every 7 days of no work and on the last day of a no work period. All calendar days need to be accounted for throughout the life of the contract. The first report following a day of no work will be for that day only. Reports need to be signed and dated by the Contractor Quality Control (CQC) System Manager. Include copies of test reports and copies of reports prepared by all subordinate quality control personnel within the CQC System Manager Report.

### 3.10 SAMPLE FORMS

A Daily Contractor Quality Control (CQC) Report (Form 696) is enclosed at the end of this section.

### 3.11 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. Take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, will be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the

Contracting Officer can issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders will be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --



SECTION 01 45 00.15 10

RESIDENT MANAGEMENT SYSTEM CONTRACTOR MODE(RMS CM)  
11/16

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this section to the extent referenced. The publications are referred to within the text by the basic designation only.

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 (2014) Safety and Health Requirements  
Manual

1.2 Contract Administration

The Government will use the Resident Management System (RMS) to assist in its monitoring and administration of this contract. The Contractor uses the Government-furnished Construction Contractor Mode of RMS, referred to as RMS CS, to record, maintain, and submit various information throughout the contract period. The Contractor mode user manuals, updates, and training information can be downloaded from the RMS web site (<http://rms.usace.army.mil>). The joint Government-Contractor use of RMS facilitates electronic exchange of information and overall management of the contract. QCS provides the means for the Contractor to input, track, and electronically share information with the Government in the following areas:

- Administration
- Finances
- Quality Control
- Submittal Monitoring
- Scheduling
- Import/Export of Data

1.2.1 Correspondence and Electronic Communications

For ease and speed of communications, exchange correspondence and other documents in electronic format to the maximum extent feasible between the Government and Contractor. Correspondence, pay requests, and other documents comprising the official contract record are also to be provided in paper format, with signatures and dates where necessary. Paper documents will govern, in the event of discrepancy with the electronic version.

1.2.2 Other Factors

Particular attention is directed to Contract Clause, "Schedules for Construction Contracts", Contract Clause, "Payments", Section 01 32 01.00 10 PROJECT SCHEDULE, Section 01 33 00 SUBMITTAL PROCEDURES, and Section 01 45 00.00 10 QUALITY CONTROL, which have a direct relationship to the reporting to be accomplished through RMS. Also, there is no separate payment for establishing and maintaining the RMS database; costs

associated will be included in the contract pricing for the work.

### 1.3 RMS SOFTWARE

RMS is a Windows-based program that can be run on a Windows based PC meeting the requirements as specified in Section 1.3. The Government will make available the RMS software to the Contractor after award of the construction contract. Prior to the Pre-Construction Conference, the Contractor will be responsible to download, install and use the latest version of the RMS software from the Government's RMS Internet Website. Any program updates of RMS will be made available to the Contractor via the Government RMS Website as the updates become available.

#### 1.3.1 RMS CONTRACTOR'S MODE (CM)

RMS Contractor's Mode or RMS CM is the replacement for Quality Control System or QCS. The database remains the same. References to RMS in this specification includes RMS CM.

### 1.4 SYSTEM REQUIREMENTS

The following is the minimum system configuration required to run RMS and Contractor Mode:

Minimum RMS System Requirements	
Hardware	
Windows-based PC	1.5 GHz 2 core or higher processor
RAM	8 GB
Hard drive disk	200 GB space for sole use by the QCS system
Monitor	Screen resolution 1366 x 768
Mouse or other pointing device	
Windows compatible printer	Laser printer must have 4 MB+ of RAM
Connection to the Internet	minimum 4 Mbs per user
Software	
MS Windows	Windows 7 x 64 bit (RMS requires 64 bit O/S) or newer
Word Processing software	Viewer for MS Word 2013, MS Excel 2013, or newer

Minimum RMS System Requirements	
Microsoft.NET Framework	Coordinate with Government QA Representative for free version required
Email	MAPI compatible
Virus protection software	Regularly upgraded with all issued manufacturer's updates and is able to detect most zero day viruses.

## 1.5 RELATED INFORMATION

### 1.5.1 RMS User Guide

After contract award, download instructions for the installation and use of RMS from the Government RMS Internet Website.

## 1.6 CONTRACT DATABASE

Prior to the pre-construction conference, the Government will provide the Contractor with basic contract award data to use for RMS. The Government will provide data updates to the Contractor as needed. These updates will generally consist of submittal reviews, correspondence status, Quality Assurance(QA) comments, and other administrative and QA data.

## 1.7 DATABASE MAINTENANCE

Establish, maintain, and update data in the RMS database throughout the duration of the contract at the Contractor's site office. Submit data updates to the Government (e.g., daily reports, submittals, RFI's, schedule updates, payment requests) using RMS. The RMS database typically includes current data on the following items:

### 1.7.1 Administration

#### 1.7.1.1 Contractor Information

Contain within the database the Contractor's name, address, telephone numbers, management staff, and other required items. Within 7 calendar days of receipt of RMS software from the Government, deliver Contractor administrative data in electronic format in RMS.

#### 1.7.1.2 Subcontractor Information

Contain within the database the name, trade, address, phone numbers, and other required information for all subcontractors. A subcontractor is listed separately for each trade to be performed. Assign each subcontractor/trade a unique Responsibility Code, provided in RMS. Within 7 calendar days of receipt of RMS software from the Government, deliver subcontractor administrative data in electronic format.

#### 1.7.1.3 Correspondence

Identify all Contractor correspondence to the Government with a serial number. Prefix correspondence initiated by the Contractor's site office with "S". Prefix letters initiated by the Contractor's home (main) office with "H". Letters are numbered starting from 0001. (e.g., H-0001 or S-0001). The Government's letters to the Contractor will be prefixed with "C".

#### 1.7.1.4 Equipment

Contain within the Contractor's RMS database a current list of equipment planned for use or being used on the jobsite, including the most recent and planned equipment inspection dates.

#### 1.7.1.5 Management Reporting

RMS includes a number of reports that Contractor management can use to track the status of the project. The value of these reports is reflective of the quality of the data input, and is maintained in the various sections of RMS. Among these reports are: Progress Payment Request worksheet, Quality Assurance/Quality Control (QA/QC) comments, Submittal Register Status, Three-Phase Control checklists.

#### 1.7.1.6 Request For Information (RFI)

Exchange all Requests For Information (RFI) using the Built-in RFI generator and tracker in RMS.

### 1.7.2 Finances

#### 1.7.2.1 Pay Activity Data

Include within the RMS database a list of pay activities that the Contractor develops in conjunction with the construction schedule. The sum of pay activities equals the total contract amount, including modifications. Each pay activity must be assigned to a Contract Line Item Number (CLIN). The sum of the activities equals the amount of each CLIN. The sum of all CLINs equals the contract amount.

#### 1.7.2.2 Payment Requests

Prepare all progress payment requests using RMS. Complete the payment request worksheet, prompt payment certification, and payment invoice in RMS. Update the work completed under the contract, measured as percent or as specific quantities, at least monthly. After the update, generate a payment request report using RMS. Submit the payment request, prompt payment certification, and payment invoice with supporting data using RMS CM. If permitted by the Contracting Officer, email or a optical disc may be used. A signed paper copy of the approved payment request is also required and will govern in the event of discrepancy with the electronic version.

### 1.7.3 Quality Control (QC)

RMS provides a means to track implementation of the 3-phase QC Control System, prepare daily reports, identify and track deficiencies, document progress of work, and support other Contractor QC requirements. Maintain this data on a daily basis. Entered data will automatically output to the

RMS generated daily report. Provide the Government a Contractor Quality Control (CQC) Plan within the time required in Section 01 45 00.00 10 QUALITY CONTROL. Within seven calendar days of Government acceptance, submit a RMS update reflecting the information contained in the accepted CQC Plan: schedule, pay activities, features of work, submittal register, QC requirements, and equipment list.

#### 1.7.3.1 Daily Contractor Quality Control (CQC) Reports.

RMS includes the means to produce the Daily CQC Report. The Contractor can use other formats to record basic Quality Control(QC) data. However, the Daily CQC Report generated by RMS must be the Contractor's official report. Summarize data from any supplemental reports by the Contractor and consolidate onto the RMS-generated Daily CQC Report. Submit daily CQC Reports as required by Section 01 45 00.00 10 QUALITY CONTROL. Electronically submit reports to the Government within 24 hours after the date covered by the report. Also provide the Government a signed, printed copy of the daily CQC report.

#### 1.7.3.2 Deficiency Tracking.

Use RMS to track deficiencies. Deficiencies identified by the Contractor will be numerically tracked using its Quality Control (QC) punch list items. Maintain a current log of its QC punch list items in the RMS database. The Government will log the deficiencies it has identified using its Quality Assurance (QA) punch list items. The Government's QA punch list items will be included in its export file to the Contractor. Regularly update the correction status of both QC and QA punch list items.

#### 1.7.3.3 QC Requirements

Develop and maintain a complete list of QC testing and required structural and life safety special inspections required by the International Code Council (ICC), transferred and installed property, and user training requirements in RMS. Update data on these QC requirements as work progresses, and promptly provide the information to the Government via RMS.

#### 1.7.3.4 Three-Phase Control Meetings

Maintain scheduled and actual dates and times of preparatory and initial control meetings in RMS.

#### 1.7.3.5 Labor and Equipment Hours

Log labor and equipment exposure hours on a daily basis. The labor and equipment exposure data will be rolled up into a monthly exposure report.

#### 1.7.3.6 Accident/Safety Reporting

The Government will issue safety comments, directions, or guidance whenever safety deficiencies are observed. The Government's safety comments will be provided via RMS CM. Regularly update the correction status of the safety comments. In addition, utilize RMS to advise the Government of any accidents occurring on the jobsite. A brief supplemental entry of an accident is not to be considered as a substitute for completion of mandatory reports, e.g., ENG Form 3394 and OSHA Form 300.

#### 1.7.3.7 Features of Work

Include a complete list of the features of work in the RMS database. A feature of work is associated with multiple pay activities. However, each pay activity (see subparagraph "Pay Activity Data" of paragraph "Finances") will only be linked to a single feature of work.

#### 1.7.3.8 Hazard Analysis

Use RMS CM to develop a hazard analysis for each feature of work included in the CQC Plan. The Activity Hazard Analysis will include information required by EM 385-1-1, paragraph 01.A.13.

#### 1.7.4 Submittal Management

The Government will provide the initial submittal register in electronic format. Thereafter, maintain a complete list of submittals, including completion of data columns. Dates when submittals are received and returned by the Government will be included. Use RMS CM to track and transmit submittals. ENG Form 4025, submittal transmittal form, and the submittal register update is produced using RMS. RMS will be used to update, store and exchange submittal registers and transmittals. In addition to requirements stated in specification 01 33 00, actual submittals are to be stored in RMS CM, with hard copies also provided. Exception will be where the Contracting Officer specifies only hard copies required, where size of document cannot be saved in RMS CM, and where samples, spare parts, color boards, and full size drawings are to be provided.

#### 1.7.5 Schedule

Develop a construction schedule consisting of pay activities, in accordance with Section 01 32 01.00 10 PROJECT SCHEDULE. Input and maintain in the RMS database the schedule either manually or by using the Standard Data Exchange Format (SDEF) (see Section 01 32 01.00 10 PROJECT SCHEDULE). Include with each pay request the updated schedule. Provide electronic copies of transmittals.

#### 1.7.6 Import/Export of Data

RMS includes the ability to import schedule data using SDEF.

#### 1.8 IMPLEMENTATION

Use of RMS CM as described in the preceding paragraphs is mandatory. Ensure that sufficient resources are available to maintain contract data within the RMS CM system. RMS CM is an integral part of the Contractor's management of quality control.

#### 1.9 MONTHLY COORDINATION MEETING

Update the RMS CM database each workday. At least monthly, generate and submit a schedule update. At least one week prior to submittal, meet with the Government representative to review the planned progress payment data submission for errors and omissions.

Make required corrections prior to Government acceptance of the export file and progress payment request. Payment requests accompanied by incomplete or incorrect data submittals will not be accepted. The Government will not

process progress payments until all required corrections are processed.

1.10 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the requirements of this specification. Take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, will be deemed sufficient for the purpose of notification.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

-- End of Section --

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4. VERBAL INSTRUCTIONS RECEIVED: (List any instructions given by Government personnel on construction deficiencies. retesting required, etc., with action to be taken.)

5. REMARKS: (Cover any conflicts in plans, specifications or instructions: acceptability of incoming materials: offsite surveillance activities; progress of work, delays, causes and extent thereof; days of no work with reasons for same.)

6. SAFETY: (Include any infractions of approved safety plan, safety manual or instructions from Government personnel. Specify corrective action taken.)

INSPECTOR

CONTRACTOR'S CERTIFICATION: I certify that the above report is complete and correct and that all material and equipment used, work performed and tests conducted during this reporting period were in strict compliance with the contract plans and specifications except as noted above.

CONTRACTOR'S APPROVED AUTHORIZED REPRESENTATIVE

SECTION 01 57 19

TEMPORARY ENVIRONMENTAL CONTROLS

PART 1 GENERAL

1.1 SCOPE:

The work covered by this section consists of furnishing all labor, materials and equipment, and performing all work required for the prevention of environmental pollution during dredging and placement operations for the MsCIP Comprehensive Barrier Island Project - Phase 3 and 4, Harrison County Mississippi project. For the purpose of this specification, environmental protection is defined as preventing the pollution of chemical, physical, or biological elements or agents that adversely affect human health or welfare; or unfavorably alters ecological balances; or affects other species of designated importance of man; or degrades the utility of the environment for aesthetic and recreational purposes. Environmental protection requires consideration of air, water, land, wetlands, seagrasses, endangered species, migratory birds, historical and archeological resources, and involves noise control, solid waste management, as well as control of pollutants.

**SEE SUBPART 1.6 OF THIS SPECIFICATION FOR SUBMITTAL REQUIREMENTS**

1.2 APPLICABLE REGULATIONS:

The Contractor and his subcontractor in the performance of this contract, shall comply with all applicable Federal, state, and local laws and regulations concerning environmental pollution control and abatement, all applicable provisions of the Corps of Engineers Manual, EM 385 1 1, entitled "Safety and Health Requirements", in effect on the date of solicitation, and the specific requirements stated elsewhere in the contract specifications. The Contractor and their subcontractor shall comply with all environmental documentation from the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), U.S. Environmental Protection Agency (EPA), Bureau of Ocean Energy Management (BOEM), Mississippi Department of Marine Resources (MDMR), Mississippi Department of Environmental Quality (MDEQ), and National Park Service (NPS), as applicable. Copies of these documents are provided in Appendix B. A copy of the USFWS and NMFS Biological Opinions (BO) in their entirety can be found on the USACE MsCIP's website at [http://www.sam.usace.army.mil/Portals/46/docs/program\\_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf](http://www.sam.usace.army.mil/Portals/46/docs/program_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf) and in Appendix N of the MsCIP Final Supplemental Environmental Impact Statement (FSEIS) which can be found at <https://www.sam.usace.army.mil/Missions/Program-and-Project-Management/Civil-Projects/>. The Contractor is responsible for compliance with the BOs as applicable, with the exception of compaction testing, tilling and escarpment removal, which will be performed by the Government. In addition, a Special Use Permit as well as a Scientific Research and Collecting Permit from the NPS is required prior to the commencement of work. All environmental documentation as well as the requirements for both Permits are provided in Appendix B. The Contractor shall be responsible for obtaining both Permits, but can seek assistance from the USACE if needed. It is the responsibility of the Contractor and their subcontractor to review, understand, and comply

with all applicable environmental Federal, state, and local laws and regulations associated with this project. It is also the responsibility of the Contractor and their subcontractor to research, understand, and comply with environmental laws that may not be noted within this contract but has jurisdiction over the work conducted under this contract.

### 1.3 NOTIFICATION:

The Contracting Officer's Representative (COR) will notify the Contractor in writing of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his authorized representative at the site of the work, shall be deemed sufficient for this purpose. If the Contractor fails or refuses to comply promptly, the COR 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 a claim for extension of time or for excess costs or damages by the Contractor unless it is later determined that the Contractor was in compliance.

### 1.4 SUBCONTRACTORS:

When conducting dredging and placement activities, the Contractor and their subcontractor shall comply with all requirements under the terms and conditions set out in the permits or certifications in the Water Quality Certification by MDEQ, Coastal Zone Consistency Certification by MDMR, and BOEM Memorandum of Agreement, all of which are included in Appendix B, and in compliance with the provisions of the contract and applicable Federal, state, and local environmental laws and regulations such as the Clean Water Act (CWA), Clean Air Act (CAA), Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); Fish and Wildlife Coordination Act (FWCA); Marine Protection, Research, and Sanctuaries Act (MPRSA); Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA); National Historic Preservation Act (NHPA); Bald Eagle Protection Act, National Pollution Discharge Elimination System (NPDES); Native American Graves Protection and Repatriation Act (NAGPRA); Marine Mammal Protection Act (MMPA); Migratory Bird Treaty Act; NPS Special Use Permits; NPS Scientific Research and Collecting Permits; and/or requirements (including special conditions specified by the USFWS and NOAA Fisheries in their BOs (see Appendix B)).

Compliance with the provisions of this section by subcontractor will be the responsibility of the Contractor.

- 1) The Contractor shall submit an Environmental Protection Plan (EPP), in accordance with provisions as specified.
- 2) The Contractor shall record on dredge load reports (examples in Appendix B) any problems in complying with laws, regulations and ordinances and corrective action taken.
- 3) The Contractor shall prepare a listing in the EPP of names, contact information, qualifications, and resumes of all hopper dredge Observers, trawler point of contacts (POCs), archaeological monitors, Tribal monitors, and turtle and bird monitors and resources needing protection (i.e., water quality, upland vegetation, submerged aquatic vegetation, wetlands, oyster reefs, landscape features, air quality, noise levels, surface and groundwater quality, fish and wildlife, shorebirds, sea turtles, historical, archeological and cultural resources) within

authorized work areas. The EPP shall be submitted to the USACE for review and approval prior to the commencement of work and will include a plan of work for any required monitoring activities. The Contractor shall submit their work plan for any monitoring. The Contractor shall meet with the USACE, USFWS and other applicable agencies before the commencement of work to coordinate and discuss the protocols for monitoring and all environmental requirements.

4) The Contractor shall prepare a Pollution Prevention Plan in the EPP that identifies all potentially hazardous substances on the job site and the intended actions to be taken to prevent the accidental or intentional introduction of such materials into the air, the water or the ground.

5) The Contractor shall set out the procedures to be followed to correct pollution of the environment due to accident, natural causes or failure to follow the procedures identified in the EPP.

6) The Contractor shall keep dredging and sand placement activities under surveillance and shall exercise all necessary controls to minimize damage to the environment by noise from equipment and various activities. Areas that have noise levels greater than 85-dB continuously or 140-dB peak (unweighted) impulse must be designated as noise hazardous areas. These work areas must have caution signs displayed at the perimeter of the noise area indicating the presence of hazardous noise levels and requiring the use of hearing protection devices.

7) The Contractor shall detail special provisions taken to meet Federal, state, and local laws and regulations regarding the storage and handling of solid and hazardous waste materials.

#### 1.5 Payment

No separate payment will be made for work covered under this section and all costs in connection therewith will be considered a subsidiary obligation of the Contractor and covered under the contract unit and/or lump sum prices in the Bidding Schedule.

#### 1.6 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

##### SD-01 Preconstruction Submittals

##### Environmental Protection Plan; G, PD

Prior to commencement of the work, the Contractor shall, after receipt of Notice of Award of the Contract and at least 7 days prior to the Preconstruction Conference, submit the EPP to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil, and shall meet with representative(s) of the Contracting Office to develop mutual understanding relative to compliance with this provision and administration of the environmental

protection program.

The Contractor shall prepare a listing in the EPP of names, contact information, qualifications, and resumes of all hopper dredge Observers, trawler point of contacts (POCs), archaeological monitors, Tribal monitors, and turtle and bird monitors and resources needing protection (i.e., water quality, upland vegetation, submerged aquatic vegetation, wetlands, oyster reefs, landscape features, air quality, noise levels, surface and groundwater quality, fish and wildlife, shorebirds, sea turtles, historical, archeological and cultural resources) within authorized work areas. The EPP shall be submitted to the USACE for review and approval prior to the commencement of work and will include a plan of work for any required monitoring activities. The Contractor shall submit their work plan for any monitoring. The Contractor shall meet with the USACE, USFWS and other applicable agencies before the commencement of work to coordinate and discuss the protocols for monitoring and all environmental requirements.

The Contractor shall prepare a Pollution Prevention Plan in the EPP that identifies all potentially hazardous substances on the job site and the intended actions to be taken to prevent the accidental or intentional introduction of such materials into the air, the water or the ground.

Qualifications; G, PD

ARCHAEOLOGICAL MONITOR QUALIFICATION; G, PD

An archaeological monitor shall be required to inspect and clear work areas and travel corridors every day that work activities are being performed and shall accompany the environmental monitor during all monitoring/relocation activities from stations 0+00 to 59+00 (Phase III template).

The qualifications of the project archaeological monitor shall comply with the requirements set forth in APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS. The archaeological monitors' qualifications shall be submitted for approval at least 7 days prior to the Preconstruction Conference to the USACE, Mobile District, Archaeologist, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil.

ENVIRONMENTAL MONITOR QUALIFICATION; G, PD

The qualifications of the environmental monitors shall be submitted for approval at least 7 days prior to the Preconstruction Conference to the USACE Mobile District, Chief of Coastal Environment, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil.

Archaeological Monitoring Plan; G, PD

An archaeological monitoring and clearance plan shall comply with the requirements set forth in APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS, and shall be submitted for approval at least 7 days prior to the Preconstruction Conference to the USACE, Mobile District, Archaeologist, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil.

Archaeology Survey Research Design; G, PD

In addition to the surveyed areas, additional survey(s) may be required outside of NPS submerged bottomlands for necessary spudding, anchoring, or laying pipeline on the seafloor. Since these surveys are likely to cross submerged bottomlands controlled by both the State of Mississippi and the BOEM, a survey strategy has been devised that satisfies the Phase I maritime cultural resources survey requirements of the State of Mississippi, the BOEM, and the USACE. Specifically, the Contractor will be required to conduct Phase I maritime survey by a qualified maritime archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards at survey transects that do not exceed 30 meters using a side-scan sonar of at least 600 kHz resolution, an Overhauser or cesium-vapor magnetometer, and sub-bottom sonar. All data must be collected and georeferenced using Differential Global Positioning System (DGPS) to ensure archaeologists can map and relocate any anomalies discovered during the survey (questions regarding additional maritime survey should be addressed to USACE, Mobile District, Archaeology, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil). A map and research design outlining the location of the proposed survey and qualifications and equipment of the Contractor should be submitted to the USACE archaeologists who will then coordinate with the BOEM archaeologists and SHPO prior to any fieldwork.

A Phase I cultural resources report will then be delivered to the USACE, as the lead Federal agency, with effects and eligibility recommendations to be coordinated with the MS SHPO, BOEM archaeologists, and Federally recognized tribes as appropriate. Surveyed areas will not be cleared for impacts until coordination is complete and written authorization from USACE is sent to the Contractor. By law, the SHPO has 30 days to comment on the effects determination and avoidance locations of the USACE and BOEM archaeologists.

#### Sea Turtle Deflector Checklist For Hopper Dredges

A hopper dredge inspection will be performed by trained USACE personnel in accordance with the "Corps of Engineers (COE) Sea Turtle Inspection Checklist for Hopper Dredges for COE Projects or COE/Army Permitted Projects" (see Appendix B) prior to dredging commencement. The Contracting Officer's Representative (COR) shall ensure the hopper inspection has been performed and all recommendations have been implemented prior to giving the project approval to proceed. Additional inspections may be required throughout the project following incidents, draghead modifications, changes in dredging depths/locations, etc.

#### Special Use Permit: Construction; G, PD

A Special Use Permit from the NPS is required for construction prior to the commencement of work. All environmental documentation as well as the requirements for the Special Use Permit are provided in Appendix B. The Contractor shall be responsible for obtaining the Special Use Permit, but can seek assistance from the USACE if needed. A copy of the Special Use Permit shall be submitted to the COR and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil, prior to commencement of work.

#### Scientific Research And Collecting Permit, Nesting Shorebird And Sea Turtle Nest Relocating And Monitoring; G, PD

A Scientific Research and Collecting Permit from the NPS is required for the monitoring of shorebirds and sea turtles, as well as for the relocation of sea turtle nests on Ship Island. Instructions for how to obtain the

permit are provided in Appendix B. The Contractor shall be responsible for obtaining the permit, but can seek assistance from the USACE if needed. A copy of the Scientific Research and Collecting Permit shall be submitted to the COR and USACE, Mobile District, Chief of Coastal Environment, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil prior to commencement of work.

#### State of Mississippi Endangered Species Handling Permit; G, PD

The Monitors must possess the required State of Mississippi permit for handling endangered species prior to the commencement of work. The State permit must be obtained from the Mississippi Museum of Natural Science (MMNS) in coordination with the USFWS. Information and application for permits can be found at <https://www.mdwfp.com/museum/seek-study/permits/scientific-collecting/>. A copy of the State of Mississippi Endangered Species Handling Permit shall be submitted to the COR and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil, prior to commencement of monitoring and handling of Endangered Species.

#### Dredge Lighting Plan; G, PD

Prior to the commencement of work, the Contractor shall submit a lighting plan for the dredge that will be used in the project in accordance with the NMFS and USFWS BO terms and conditions (see Appendix B) to the COR and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil. The plan shall include a description of each light source that will be visible from the beach and nearshore, and the measures implemented (shielding, reduction, lowering) to minimize this lighting throughout the sea turtle nest monitoring season (April 15 through September 30) while still meeting OSHA safety standards.

#### SD-10 Operation and Maintenance Data

#### Mississippi Sea Turtle Crawl Datasheet

Nesting and crawl data will be reported on this form and submitted daily to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil; USFWS, Mr. Paul Necaie, Paul\_Necaie@fws.gov; Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil; and the NPS, Ms. Erin Plitsch, Erin\_Plitsch@nps.gov; and Ms. Kelly Irick at Kelly\_Irick@nps.gov (see Appendix B).

#### Dredge Load Data Form

The Contractor shall record on dredge load data reports (examples in Appendix B) any problems in complying with laws, regulations and ordinances and corrective action taken. Variables such as screen and deflector condition, inflow and overflow box contents, weather, etc. should also be recorded. After each load is completed and observed data has been obtained, the Observer shall fill out the Load Data Form found on the Operations and Dredging Endangered Species System (ODESS) website at <http://dqm.usace.army.mil/odess/#/home> to record the variables. The form must be filled out in its entirety before submittal. At the end of the Observers shift, all of their Load Data Forms shall be 'pushed' to the



ODESS system for review.

#### Marine Mammal Observation

If any whale is observed, the Marine Mammal Observation Data Form (see Appendix B) shall be completed and submitted to the ODESS database as soon as possible (not to exceed 12 hours after the incident) consistent with the endangered species compliance section of the contract specification and the BOs.

#### Sturgeon Incident

If an incident occurs (a sturgeon is recovered by the dredge, alive or dead), or sturgeon parts are identified during a load, after the Observer notifies USACE, Mobile District, Chief of Coastal Environment, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil; USACE, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil, the Observer shall complete a Sturgeon Incidental Data Form (see Appendix B) within the ODESS System (add Ref No. SER-2012-09304 to the report).possible (not to exceed 12 hours after the incident). The form must be filled out in its entirety before submittal. All specimens shall be photographed with a digital camera and photographs shall be submitted with the Sturgeon Incidental Data Form (.JPG or .PDF). The Sturgeon Incidental Data Form shall be submitted to the ODESS system within 12 hours from the time of the incident occurrence. If an Observer suspects that several endangered species segments or pieces retrieved over the course of multiple loads is the same individual, the Observer shall indicate this in the comments section of the Sturgeon Incidental Data Form. The nature of findings shall be fully described in the incidental take forms including references to photographs.

#### Turtle Incident

If an incident occurs (a sea turtle is recovered by the dredge, alive or dead), after the Observer notifies USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil; USACE, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil., the Observer shall complete a Turtle Incident Report Form (see Appendix B) within the ODESS system (Add Ref No. SER-2012-09304 to the report). The form must be filled out in its entirety before submittal. All specimens shall be photographed with a digital camera and photographs shall be submitted with the Turtle Incident Report Form (.JPG or .PDF). The Turtle Incident Report Form shall be submitted to the ODESS system within 12 hours from the time of the incident occurrence. If an Observer suspects that several endangered species segments or pieces retrieved over the course of multiple loads is the same individual, the Observer shall indicate this in the comments section of the Turtle Incident Report Form. The nature of findings shall be fully described in the incidental take forms including references to photographs.

If a sea turtle is recovered through the dredge alive, it must be immediately taken to the nearest rehabilitation center (the location and contact information will be provided by the Government) such as the Institute for Marine Mammal Studies (IMMS), 10801 Dolphin Ln, Gulfport, MS 39503, 1-888-767-3657, or 1-228-896-9182 and email contactus@imms.org. Also notify the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil and Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil.

### Trawling Report

Relocation trawling shall be conducted to remove sea turtles and Gulf sturgeon from the borrow areas during dredging to help prevent entrainment by the dredge. The results of daily trawls shall be recorded on the Relocation Trawl Daily Report (see Appendix B). Daily trawling results and all photographs of captures shall be sent to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil for the initial 7 days. Based on the trawling results, the Mobile District, Planning Division, Coastal Environmental will make a decision on whether or not there is a need to continue trawling. In addition, trawling will be automatically required if Condition 12 as defined in the NMFS BO SER-2012-09304, in Appendix B, is met. If trawling continues after the initial seven (7) days then a daily trawl report and all photographs of captures shall be sent to the COR, the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil.

### Cooperative Marine Turtle Tagging Program (CMTTP) Tagging Data Form

Sea turtle external flipper tag and Passive Integrated Transponder (PIT) tag data generated and collected by relocation trawlers shall also be submitted to the CMTTP, on the appropriate CMTTP form (see Appendix B), at the University of Florida's Archie Carr Center for Sea Turtle Research at <https://accstr.ufl.edu/resources/tagging-program-cmttp/>.

### Turbidity Monitoring Report

The turbidity monitoring report (see Appendix B) shall be filled out and submitted weekly to the COR who will then forward to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil. The Contractor shall provide the name(s) and credentials of the person(s) responsible for turbidity monitoring in the EPP.

### 1.7 Notification

The COR will notify the Contractor in writing of any observed noncompliance with the foregoing provision, Federal, state or local environmental laws or regulations, permits, certifications and other elements of the Contractor's EPP. The Contractor shall, after receipt of such notice, inform the COR of the proposed corrective action and take such action when approved by the COR. The COR may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the COR may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal Law.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 IMPLEMENTATION:

The Contractor shall also bring in writing a copy of the EPP to the Preconstruction Conference either in completed or draft form in order to develop mutual understanding relative to compliance with this provision and administration of the EPP.

3.2 PROTECTION OF WATER RESOURCES

The Contractor shall not pollute any water bodies including streams, lakes, bays, estuaries, or other marine or fresh waters with fuels, oils, acids, or any other harmful materials. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, state, county, and municipal laws concerning water pollution. The discharge of plastics of any kind within estuarine or marine waters is strictly prohibited. All work under this contract shall also be performed in such a manner that objectionable conditions will not be created in proximity to the project areas.

- 1) The Contractor shall ensure that the dredging of the identified borrow sites and the placement of sand within the project footprint as designated in the contract shall be performed with minimum damage to the environment.
- 2) The contract designates areas for placement of all dredged material. No other areas are approved for dredged material placement.
- 3) The Contractor shall limit the depth of cut in a single swing of the dredge to that depth that precludes the collapse of the facing material or control the dredge speed to obtain a reasonable progress without producing excessive turbidity, which is turbidity that exceeds the state of Mississippi's turbidity standards. There are no turbidity standards for Federal waters. The Contractor may overflow the dredge during dredging at the borrow sites. However, if the dredge is working in Federal waters within 750 feet of Mississippi State waters (i.e., the mixing zone), turbidity standards for Mississippi State shall be observed. See sheet CB-111 of the Contract Plans for turbidity standard delineation between Federal and State waters.
- 4) The Contractor must comply with all turbidity and monitoring standards and other specific conditions that are set forth in the Mississippi water quality standards. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units. However, turbidity within the Ship Island project areas may reasonably exceed this turbidity standard for temporary periods of time (at the direction of the COR), but shall not result in permanent environmental harm. Turbidity measurements must be taken daily at the dredge site within state waters, discharge sites and a background location to be determined by the Contractor. The turbidity monitoring report shall be filled out and submitted weekly to the CO who will then forward to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil. The Contractor shall provide the name(s) and credentials of the person(s) responsible for turbidity monitoring in the EPP. A violation of water quality

standards occurs when turbidity levels exceed the standards beyond temporary reasonable periods of time (at the direction of the COR). If turbidity levels exceed the water quality standards, corrective actions shall be taken. Such corrective actions may include modifying work procedures that are responsible for the violations, such as reducing the dredge rate or installing and maintaining turbidity control devices. If such corrective actions are ineffective, notify the COR, who will then notify the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds.

5) In accordance with the 401 Water Quality Certification, Best Management Practices (BMPs) shall be used at all times during operations to minimize turbidity at both the dredge and placement site. The placement/restoration site shall be constructed and maintained in a manner that minimizes the discharge of turbid waters into waters of Mississippi and Outer Continental Shelf (OCS) waters. BMPs shall include measures such as staged construction, placement techniques, or other measures to minimize turbidity in the vicinity of seagrasses. The dredging activities shall be conducted in such a manner that no sumps are created within the dredge areas. No sewage, oil, refuse or other pollutants shall be discharged into the watercourse.

6) Any material moved by the dredge, pipeline, or any other such equipment shall be moved in such a way that:

- a) material will not be placed outside of the designated placement boundaries as specified by the Contract; and

- b) safeguards against excess turbidity and suspended solids entering any adjacent water body. Work shall be performed in such a way as not to impact any areas of seagrasses, shellfish beds, migratory birds or their nesting, or wetland areas

7) Special measures shall be taken to prevent chemicals, fuels, oils, and greases from entering area waters, at all times. All equipment shall be inspected to ensure that no leaking fluids would contaminate the work area. In addition, Contractor shall be responsible for cleaning the equipment of any plant parts such as leaves, stems, roots, or viable seeds prior to the start of work to prevent the spread of invasive or exotic plant species. All vessels, equipment, and personal items must be inspected for any non-native animal's prior to arrival on the island. Equipment such as fuel tanks shall be placed in a lined containment area to prevent any contamination during refueling operations or from any accidental spillage.

8) Discharge of any pollutant into the watercourse is strictly prohibited, except as otherwise specified or allowed in other sections of the Technical Specifications.

9) Seagrass Beds (Submerged Aquatic Vegetation): The Government provided protection of the existing seagrasses (submerged aquatic vegetation) for Phase I of the Barrier Island Restoration Project through a separate "Environmental Services" contract using a custom turbidity barrier. The "Environmental Services" turbidity barrier is only guaranteed to be in place for two months beyond the completion of the Phase I contract which completed in February, 2019. The Ship Island Phase III/IV beach fill Contractor shall be solely responsible for ensuring compliance with the turbidity standards throughout the

duration of their contract regardless of whether the "Environmental Services" turbidity barrier is in place. The Contractor shall be responsible for the installation and maintenance of their own turbidity protection measures throughout the life of this beach fill project. The beach fill Contractor shall employ placement techniques or other measures to minimize turbidity in the vicinity of the seagrasses and ultimately meet the turbidity standards outlined in this section. The approximate locations of the existing seagrass beds and approximate turbidity barrier extents are shown on sheet CB-110 and CB-111 of the contract drawings. In the event turbidity levels exceed allowable levels within the seagrass beds, the Contractor shall alter the placement techniques/location of their turbidity protection measure(s) or take other measures, as needed, at no additional cost to the Government. The Contractor must ensure turbidity remains within the allowable limits. Turbidity barrier performance specification can be found in Section 35 20 25 Beach and Dune Fill, 1.5.4 Protection of Existing Seagrass Beds. The Contractor shall submit in writing any changes or alterations to the placement techniques/location of their turbidity protection measure(s) to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil and Mr. Nathan Lovelace at Nathan.D.Lovelace@usace.army.mil.

Neither the Contractor nor their subcontractor may directly or indirectly impact or damage, or cause to be impacted or damaged, the seagrass beds by walking, driving, propeller wash, or by any other means. If damage occurs to seagrass beds the Contractor will immediately report the damage to USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil and Mr. Nathan Lovelace at Nathan.D.Lovelace@usace.army.mil. Additionally, specific conditions regarding seagrass beds around Ship Island are as follows:

- a) The shoals along the north shore (depth of 10 feet or less) of the islands are sensitive seagrass habitat. Vessels accessing the north shore will be limited to small craft vessel that can approach the shore without scouring bottom sediment. See also sheet CB-110 of the Contract Plans for the coordinates of a "no vessel zone" located between seagrass beds and the osprey/eagle nesting buffer on the eastern Sound side portion of the island. Vessels shall not operate within the "no vessel zone" under any circumstances and all language contained within the Contract Specifications that references vessel traffic is applicable only to those locations where vessel traffic IS allowed.
- b) Vessel operators shall minimize all disturbances to the bottom and shall trim their motors to prevent scarring the seagrass habitat. During shallow water operations in areas where seagrass beds are located, a deck Observer should not observe a sand plume in the water column from the vessel their observing.
- c) Activities such as walking and anchoring boats are prohibited in seagrass beds.
- d) Seagrass beds may cover more, or less, area than what is shown on the Contract Plans; therefore, the Contractor is responsible for verifying their location prior to all activities around Ship Island and shall coordinate all vessel traffic with the COR.

### 3.3 RECORDING AND PRESERVING HISTORICAL AND ARCHAEOLOGICAL FINDS:

All items over 50 years old having any apparent historical or archeological interest, which are inadvertently discovered in the course of any removing of material and placement activities shall be carefully preserved. With the exception of cultural resources specifically referenced elsewhere in this document, the Contractor shall leave the archaeological find undisturbed and immediately report their findings to the COR and the USACE, Mobile District, Archaeologist, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil. Alternate archaeology POCs are Mr. Michael Malsom, 251-690-2023, email Michael.F.Malsom@usace.army.mil, and Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil.

#### **BORROW AREAS**

In compliance with Section 106 of the National Historic Preservation Act, all of the lands, submerged and terrestrial, that are to be impacted by the project in NPS lands have been surveyed for cultural resources; however, despite thorough survey coverage, cultural resources may still be inadvertently discovered in the course of construction. Due to the potential for cultural resources, spudding, and any other type of penetration below the seafloor, will be limited to areas designated in the map located in Appendix B which have been cleared for cultural resources. The areas identified as "access corridors" have been cleared for cultural resources to -12 feet NAVD 88. Consequently ground disturbance can take place within the corridors to that depth. This includes dredging, driving of temporary pilings, or any combination thereof. No disturbance shall exceed that depth. No other ground disturbance will occur outside of the minimal disturbance of the pipeline within NPS waters.

All borrow areas have been surveyed and cleared for cultural resources. Anchoring at the borrow areas shall be restricted to within 150 feet of the borrow area limits provided on the contract drawings.

Magnetometer surveys were conducted at the borrow areas with returns shown on the drawings and in Appendix D, provided for informational purposes. The contractor shall submit for approval an Obstruction Identification and Removal Plan to the COR prior to the start of dredging in the designated borrow areas. Any obstructions needing to be removed from the borrow area to complete the work shall be approved by the COR and shall be disposed of in location(s) identified by the Contractor at no expense to the Government. The Contractor shall make their own investigation of submerged, surface, and overhead obstructions in areas deemed necessary for work that have not been previously surveyed for cultural resources.

Magnetic signatures identified in the project magnetometer surveys were not similar to the known submerged cultural resources they were compared to; however, interpreting magnetic signatures without corresponding acoustic signatures can be difficult. During the course of investigating magnetic anomalies for obstruction removal, if a magnetic anomaly is found to be a submerged cultural resource (ship wreck, historic anchor, cannon, other armament, etc.), the Contractor shall refer to the Unanticipated Discoveries Plan in Appendix B. The exact location, depths, and height of submarine cables, pipes, highlines, docks, piers, bridges, etc. (as applicable) are not known, and it will be necessary for the Contractor to ascertain interference problems and notify the respective owners in advance of dredging operations. The Contractor shall make all arrangements with the

respective owners of the structure to assure satisfactory completion of dredging in the vicinity with a minimum interruption of service, and shall perform operations in such a manner as will avoid damage to these facilities.

The Contractor shall be required to follow a survey strategy that satisfies the Phase I maritime cultural resources survey requirements of the State of Mississippi, the BOEM, and the USACE if additional survey(s) outside of NPS submerged bottomlands are necessary for spudding, anchoring, or laying pipeline on the seafloor. Specifically, the Contractor shall be required to conduct Phase I maritime survey by a qualified maritime archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards at survey transects that do not exceed 30 meters using a side-scan sonar of at least 600 kHz resolution, an Overhauser or cesium-vapor magnetometer, and sub-bottom sonar. All data must be collected and georeferenced using DGPS to ensure archaeologists can map and relocate any anomalies discovered during the survey (questions regarding additional maritime survey should be addressed to USACE, Mobile District, Archaeology, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil). A map and research design outlining the location of the proposed survey and qualifications and equipment of the Contractor should be submitted to the USACE archaeologists who will then coordinate with the BOEM archaeologists and SHPO prior to any fieldwork.

A Phase I cultural resources report will then be delivered to the USACE, as the lead Federal agency, with effects and eligibility recommendations to be coordinated with the SHPO, BOEM archaeologists, and Federally recognized tribes as appropriate. Surveyed areas will not be cleared for impacts until coordination is complete and written authorization from USACE is sent to the Contractor. By law the SHPO has 30 days to comment on the effects determination and avoidance locations of the USACE and BOEM archaeologists.

#### **SUB-AERIAL SITE CONDITIONS**

If construction activities inadvertently discover possible human remains, funerary objects, sacred objects, or objects of cultural patrimony, ALL work shall be stopped within a 10 foot radius of the discovery and the discovery shall be protected from disturbance or further viewing. Immediately after the object is protected (within 30 minutes), the Contractor shall notify the project's archaeological monitor of the discovery and provide GPS coordinates of its location. The archaeological monitor shall proceed according to the timeline and protocols described in Appendix E, Archaeological Monitoring Requirements. The COR shall be notified when the archaeological monitor has cleared the area. The Contractor shall not perform work in the "discovery" area without notification in writing (includes email) from the COR that they are approved to do so. The COR and District archaeologist will also notify Tribal monitors of the inadvertent discovery and of any actions taken by the archaeological monitor to protect and secure the discovery following protocols outlined in Appendix E.

Cultural resource sites that limit Contractor entry, access, or staging, or that provide special conditions for work (e.g., sand must cover the site prior to equipment traversing it) will be identified, though not necessarily as cultural sites. The District Archeologist will further coordinate with the NPS, the Mississippi Department of Archives and History (MDAH), and Mississippi State Historic Preservation Officer (SHPO), to obtain the precise coordinates for an archeological site. The site(s)

shall be identified and the coordinates shall be provided to the Contractor at the pre-construction conference.

Tribal monitors shall be provided access to the project site at no additional cost to the Government so long as it does not burden the Contractor or stop work. Tribal monitor site visits shall be coordinated through the COR with Patirck O'Day and the Contractor will be given written notice of the visit. The COR shall determine if project operations are conducive to visitor safety and may recommend an alternate date for the visit if there is a concern for visitor safety due to mechanical operations or severe wether. The COR shall accomodate visits from Tribal monitors as soon as the weather improves or they believe that there is no longer a safety risk to visitors due to heavy equipment or mechanical operations in the immediate vicinity of the project site (Phase III).

### 3.3.1 Archaeological Sites

If any shipwreck, artifact, or other objects of antiquity that have scientific or historical value, or are of interest to the public, are discovered, located, and/or recovered, the Contractor acknowledges that:

- 1) The sites(s), articles, or other materials are the property of the State or Federal Government; and
- 2) Shall immediately notify the COR, USACE, Mobile District, Archaeologist, Mr. Patrick O'Day at 251-690-2326, Patrick.M.O'Day@usace.army.mil, and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil.

### 3.3.2 Environmentally Sensitive Areas

- 1) The Contractor shall protect cultural resources during all phases of the project. As described in sub-part 3.3, RECORDING AND PRESERVING HISTORICAL AND ARCHAEOLOGICAL FINDS, SUB-AERIAL SITE CONDITIONS, the location of known cultural resource areas shall be provided to the Contractor at the pre-construction conference. These areas shall be referred to as environmentally sensitive areas.

One known environmentally sensitive area of approximately 67 acres is located near the Phase IV portion of the project. Due to the sensitivity of the area, at least two feet (24 in., 60.96 cm) of sand shall be maintained at all times before heavy equipment may traverse the sensitive area.

- 2) Specific terms and conditions apply to other environmentally sensitive areas within the project boundaries. These terms are described throughout this document and summarized in Appendix E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

### 3.4 PROTECTION OF LAND RESOURCES:

The environmental resources within the project boundaries and those outside the limits of permanent work under this contract shall be protected during the entire period of this contract. The Contractor shall confine his activities to areas defined by the drawings and specifications. The



Contractor shall perform a preconstruction survey, which includes but is not limited to photographs, and provides this to the COR prior to dredging activities.

- 1) It is intended that the land resources outside the limits of permanent work performed under this contract be preserved in their present condition or be restored to natural conditions, after completion of dredging and placement activities.
- 2) The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in an area approved by the COR. The COR shall approve all temporary movement or relocation of Contractor facilities.
- 3) The Contractor shall be required to maintain all work areas within and/or outside of the project boundaries free from dust that would cause a hazard or nuisance to others.
- 4) The Contractor shall restore to pre-impacted condition all signs of temporary support facilities such as haul roads, work areas, structures, foundations of temporary structures, or any other vestiges of activities as directed by the CO and/or COR.
- 5) Solid wastes (excluding clearing debris) includes any waste generated by the Contractor which meets the most complete definition of solid waste as described by Federal, state and local laws and regulations. Solid waste shall be placed in containers that are emptied on a regular schedule. All handling and disposal shall be conducted to prevent spillage and contamination.
- 6) Hazardous waste shall be stored, removed from the work area and disposed of in accordance with Federal, State and local laws and regulations.

### 3.5 PROTECTION OF FISH AND WILDLIFE:

The Contractor shall at all times perform all work and take such steps required to prevent any significant interference or disturbance (as determined by the COR) to fish and wildlife.

- 1) The Contractor will not be permitted to alter water flows or otherwise disturb native habitats adjacent to the project area, which, in the opinion of the COR, are critical to fish or wildlife. Fouling or polluting of water will not be permitted.
- 2) Wastewater shall be processed, filtered, ponded, or otherwise treated, if applicable, prior to their release from project area into waterways.
- 3) If applicable, the operation's return water from the removal or placement of material shall not impact any areas of seagrasses, shellfish beds, or wetland areas.
- 4) There are environmentally sensitive areas on the site which are not suitable for staging of equipment. These areas are shown on the Environmental Sensitive Areas plan drawing CB-110 and are identified as the OSPREY/EAGLE BUFFER AREA. Additional restrictions to staging and equipment operation may be found in Contract Specification Section 35 20 25, BEACH AND DUNE FILL (Part 3, execution, Sub-Part 3.1.2, Staging

and Access Areas). The Contractor shall confine his activities to areas defined by the drawings and specifications. Actions that may be required outside of these limits shall first receive approval from the QAR. In addition, Manatees may be occasionally found in the shallow waters of the project area during the warmer months of the year. Given their slow-moving and low visibility nature, it is possible that manatees could wander into close proximity of the dredging and placement operations. To minimize contact and potential injury to manatees, the Standard Manatee Construction Conditions as specified by the U.S. Fish and Wildlife Service shall be observed by the Contractor (included in Appendix B).

5) All dredged material in association with this action shall be placed at the designated placement areas as shown on the contract drawings.

6) Threatened and Endangered Species: The Contractor shall take all necessary precautions to ensure that dredging and placement activities do not adversely impact any listed threatened and endangered species or critical habitats of species protected under the Endangered Species Act of 1972 and/or the Marine Mammal Protection Act of 1972. The Contractor shall instruct all personnel associated with the project of the potential presence of manatees, whales, giant manta ray, sea turtles, federally protected birds- Piping plover, Red knots, and Bald eagles and Gulf sturgeon in the area, and the need to avoid harming these animals. The Contractor shall further instruct all personnel that the waters of the Mississippi Sound and portions of the nearshore Gulf of Mexico are designated as Gulf sturgeon critical habitat, and West Ship and East Ship Islands are designated as Piping plover critical habitat. All construction personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing manatees, Piping plover, sea turtles, Gulf sturgeon, giant manta ray, dolphins or whales; or destroying or adversely modifying critical habitat of these species which are protected under the Marine Mammal Protection Act of 1972, the Migratory Bird Treaty Act, Bald Eagle Protection Act, and the Endangered Species Act of 1973. The Contractor must take special precautions to ensure adequate protection for wildlife resources.

7) The Contractor shall adhere to all Federal, state, and local laws and regulations for this project and the Terms and Conditions of the NMFS BO for this project, (Ref No. SER-2012-09304)(A copy of this document is included as an attachment in Appendix B and the full copy can be found at the website provided in section 1.2 APPLICABLE REGULATIONS). The Contractor shall coordinate all activities associated with these species with the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260 or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil.

8) The Contractor shall coordinate any activities that affect federally protected birds, or sea turtle nesting and relocations with the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260 or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil, Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil and the USFWS, Jackson, Mississippi, Mr. Paul Necaise, by phone 228-493-6631 or by email at Paul\_Necaise@fws.gov.

UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR'S ENVIRONMENTAL MONITORING SUB-CONTRACTOR(S) COORDINATE OR COMMUNICATE WITH THE NATIONAL PARK

SERVICE, THE FISH AND WILDLIFE SERVICE, OR ANY OTHER AGENCY, WITHOUT THE EXPRESS WRITTEN (INCLUDES EMAIL) CONSENT OF THE QAR, OR AS OTHERWISE SPECIFIED IN THESE CONTRACT DOCUMENTS. COMMUNICATION AND DATA TRANSFER PROTOCOLS SHALL BE STRICTLY ADHERED TO DURING THE ENTIRE PERIOD OF PERFORMANCE. VIOLATIONS OF THESE PROTOCOLS SHALL BE REPORTED BY THE CONTRACTOR TO THE CONTRACTING OFFICER, (KO), Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665.

9) Items 9 through 18 are relevant to hopper dredging only:

a) Observers: The Contractor shall supply NMFS-approved protected species Observers to be aboard the hopper dredges to monitor the hopper dredged material, screening, and dragheads for sea turtles and Gulf sturgeon and their remains. Observer coverage shall be 100 percent (24 hr/day). During transit to and from the borrow and placement areas, the Observer shall monitor from the bridge during daylight hours for the presence of sea turtles and Gulf sturgeon. During dredging operations, while dragheads are submerged, the Observer shall continuously monitor the inflow and/or overflow screening for sea turtles and Gulf sturgeon and/or turtle or sturgeon parts. Upon completion of each load cycle, dragheads should be monitored as the draghead is lifted from the sea surface and is placed on the saddle in order to assure that sea turtles that may be impinged are not lost or un-accounted for. Observers shall physically inspect dragheads and inflow and overflow screening/boxes for threatened and endangered species incidents.

b) A hopper dredge inspection will be performed by trained USACE personnel in accordance with the "Corps of Engineers (COE) Sea Turtle Inspection Checklist for Hopper Dredges for COE Projects or COE/Army Permitted Projects" (See Appendix B) prior to dredging commencement. The COR shall ensure the hopper inspection has been performed and all recommendations have been implemented prior to giving the project approval to proceed. Additional inspections may be required throughout the project following incidental takes, draghead modifications, changes in dredging depths/locations, etc.

10) The results of the endangered species monitoring shall be documented using the ODESS FC toolkit. In order to monitor dredging impacts on threatened and endangered aquatic species, the dredge shall be equipped with a dedicated tablet computer running ODESS software to track and document the presence of sea turtle, sturgeon, and marine mammal species during dredging operations. The ODESS system, which consists of a tablet computer with an Internet connection, shall be a standalone system, exclusive to other systems, and shall have USACE ODESS data collection and reporting software, referred to as the ODESS Field Collector (FC) tool, installed by USACE ODESS support personnel. All Observers shall be trained in the use of the ODESS system prior to usage and reporting data. The Contractor is responsible for obtaining the required hardware, software, and internet access required to run the ODESS system. In the event hardware or software problems prevent the storage or transmission of the collected data to the ODESS system and the problem cannot be solved within 24 hours, the ODESS forms and information shall be maintained and submitted to ODESS Support (ODESS@usace.army.mil), USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds,

Lekesha.W.Reynolds@usace.army.mil, and the USACE Inspector or CO according to the schedule outlined in the contract specifications. All forms can be downloaded from the ODESS public website at: <http://dqm.usace.army.mil/odess/#/download>). If software problems occur, the Observer is to call: (1-877-840-8024) immediately. ODESS system requirements are as follows:

The computer system utilized by the observing company shall consist of a computer, monitor, keyboard, mouse, data modem, UPS, and network hub. This system shall be exclusive for ODESS data collection and submittal. This computer must meet or exceed the following performance specifications:

CPU: Intel or AMD processor with a (non-overclocked) clock speed of at least 3 gigahertz (GHz)

Hard drive: 250 gigabytes (GB); internal

Ram: 4 gigabytes

Ethernet Adapter: 10 or 100 megabit (Mbit) internal network card with an RJ-45 connector

Video Adapter: Must support resolution of 1024x768 at 16 bit color depth

Keyboard: Standard 101-key

Mouse: Standard 2-button mouse

Monitor: 15 inch viewable display; must support 1024x768 resolution at 16 bit color depth

CD-ROM drive: 16x read speed/8x write speed

Ports: 1 free Serial port with standard 9-pin connectors; 1 free USB port

Other hardware: Category 5 (Cat-5) cable with standard RJ-45 plugs connecting the network adapter to the network hub; one spare cable

Other software: Windows 7 Professional Operating System and any necessary manufacturer-provided drivers for the installed hardware

a) Start of the Project: Prior to the start of dredging, Observers shall verify that the ODESS FC tool is installed and operational on a dredge's dedicated tablet computer and that a viable Internet connection is available. In addition, before a project is initiated, on the ODESS FC tool homepage Observers shall retrieve (or "pull down") project-specific information from the ODESS database and perform a one-time setup of the dredging project by establishing the dredge name and time zone.

b) After each load is completed and observed data has been obtained, the Observer shall fill out the Load Data Form within the ODESS system to record variables such as screen and deflector condition, inflow and overflow box contents, weather, etc. The

form must be filled out in its entirety before submittal. At the end of the Observers shift, all of their Load Data Forms shall be 'pushed' to the ODESS system for review.

c) Notification Procedures: If there are any incidents (live or dead) involving threatened or endangered species, the Contractor shall notify the COR, and the following individuals immediately: USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds at 251-690-3260 office or BB 251-327-8650, if unable to reach her, please contact the alternate POC, Chief of Environment & Resources Branch, PD-EC, Ms. Jennifer Jacobson at 251-690-2724 office or BB 251-472-7589.

d) The COR will direct the Contractor as to any required shutdown procedures or necessary changes in dredge operation as to reduce the likelihood of additional incidents. The Contractor shall suspend dredging immediately if:

- (i) Two or more turtle incidents occur within 24 hours.
- (ii) Incidents involving two turtles of the same species, occur during dredging.
- (iii) Four turtle incidents, regardless of species, occur during dredging.
- (iv) One gulf sturgeon incident during dredging.

The allowable incidental take in the NMFS issued BO for this project for both state and OCS waters consist of the following: up to 14 sea turtles observed (9 Kemp's ridley and 5 loggerheads; or a combination of 8 Kemp's ridley and 4 loggerheads and 2 green turtles) or 28 total (observed and unobserved - 18 Kemp's ridley and 10 loggerheads; or a combination of 16 Kemp's ridley and 8 loggerheads and 4 green turtles) and 8 (observed and unobserved) Gulf sturgeon killed during dredging, which will be detected and documented by onboard protected species Observers.

e) Turtle Incident Report Form: If a 'Turtle Incident' occurs (a sea turtle is recovered by the dredge, alive or dead), after the Observer notifies the pertinent parties by telephone as indicated above, the Observer shall complete a Turtle Incident Report Form (see Appendix B) within the ODESS system (Add Ref No. SER-2012-09304 to the report). The form must be filled out in its entirety before submittal. All specimens shall be photographed with a digital camera. These photographs shall be submitted with the Turtle Incident Report Form (.JPG or .PDF). The Turtle Incident Report Form needs to be submitted or 'pushed' to the ODESS system within 12 hours from the time of the incident occurrence. If a live turtle is recovered from the dredge it shall be immediately transported by a NMFS permitted and approved protected species Observer to the nearest sea turtle and marine mammal rehabilitation facility such as the Institute for Marine Mammal Studies (IMMS), 10801 Dolphin Ln, Gulfport, MS 39503, 1-888-767-3657, or 1-228-896-9182 and email [contactus@imms.org](mailto:contactus@imms.org). Also notify the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-32620, or BB 251-327-8650, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil) and Ms. Caree Kovacevich, [Caree.A.Kovacevich@usace.army.mil](mailto:Caree.A.Kovacevich@usace.army.mil). If an Observer

suspects that several endangered species segments or pieces retrieved over the course of multiple loads is the same individual, the Observer needs to indicate this in the comments section of the Turtle Incident Report Form. The nature of findings shall be fully described in the incidental take forms including references to photographs.

f) Sturgeon Incidental Data Form: If a sturgeon or sturgeon parts are identified during a load, after the appropriate parties are notified as indicated above, a Sturgeon Incidental Data Form (see Appendix B) shall be completed and submitted to the ODESS database as soon as possible (not to exceed 12 hours after the incident). Any applicable documentation (scanned copies of the paper Observer load and incident forms, species photos, etc.) shall be included as electronic attachments (.JPG or .PDF) and submitted using the FC tool.

g) Marine Mammal Observation Data Form: If any whale is observed, both the Dredge Load and the Marine Mammal Observation Data Forms (see Appendix B) shall be completed and submitted to the ODESS database as soon as possible (not to exceed 12 hours after the incident) consistent with the endangered species compliance section of the contract specification.

h) Fibropapilloma Documentation Form: If any turtle exhibiting fibropapillomas are observed, a Fibropapilloma Documentation Form (Appendix B) shall be completed and submitted to the Sea Turtle Salvage and Stranding Network, Dr. Melissa Cook, melissa.cook@noaa.gov.

11) Screening: Sea turtle Observers shall provide for 100% inflow screening of dredged material; 100% overflow screening is recommended. If conditions prevent 100% inflow screening, inflow screening may be reduced gradually, as further detailed in the following paragraph, but 100% overflow screening is then required. Prior to the reductions in screening, permission must be requested and granted from the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260 or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil, and NMFS will be notified. A technical explanation of reductions in screening shall be provided in the dredging report.

a) Screen Size: The hopper's inflow screens shall have 4-inch by 4-inch screening. If the COR, in consultation with Observers and the draghead operator, determines that the draghead is clogging and reducing production substantially, the screens may be modified sequentially: mesh size may be increased to 8-inch by 8-inch, then 16-inch by 16-inch openings. Further clogging may compel removal of the screening altogether, in which case effective 100% overflow screening is required. The Contractor shall contact and request permission from USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260 or BB 251-327-8650, or as alternate POC, Chief of Environment & Resources Branch, Ms. Jennifer Jacobson at 251-690-2724 office or BB 251-472-7589, prior to if the inflow screening is going to be reduced or eliminated.

12) Dredging Pumps: Standard operating procedure shall be that

dredging pumps shall be disengaged by the operator when the dragheads are not firmly on the bottom, to prevent impingement or entrainment of sea turtles within the water column. If the water velocity at the draghead can be kept less than 4 ft/sec the dredge pumps may be left engaged throughout the water column.

13) Sea Turtle Deflecting Draghead: A state-of-the-art plow-type rigid deflector draghead must be used on all hopper dredges in all borrow areas at all times of the year and shall be installed while performing hopper dredging operations under this contract. The Contractor shall submit drawings showing the proposed sea turtle deflector device and its attachment to the equipment being used. Drawings submitted shall include the approach angle for any and all depths to be dredged during the dredging. A copy of the approved drawings and calculations shall be available on the vessel during the dredging. If the Contractor has the draghead(s) screened, in no case shall the screening for the draghead production opening be smaller than 8x8 inches. Pumps employed must be sufficient to operate efficiently with this screening as a minimum.

14) Hopper Dredge Equipment: Hopper dredge dragheads shall be equipped with sea turtle deflectors which are rigidly attached. Deflectors shall be solid with no openings in the face. Such other designs will be considered provided sufficient information is included indicating a particular modification is effective in minimizing potential turtle incidents. USACE technical staff will coordinate with NMFS, Protected Species Division on the effectiveness of this alternate design. A recommendation from USACE technical staff and NMFS, Protected Species Division will be provided to the COR for final approval or disapproval of the alternate design. The Contractor should not presume that a decision on an alternative design will be provided during the contracting period. The Contractor's unit price shall be based on the original, solid faced deflector design. No adjustment in unit price will be made for the approval or denial of an alternate deflector design. No dredging shall be performed by a hopper dredge without an installed turtle deflector device approved by the COR. Sample Turtle Deflector Design Details are included within Appendix B.

15) The leading v-shaped portion of the deflector shall have an included angle of less than 90 degrees. Internal reinforcement shall be installed in the deflector to prevent structural failure of the device. The leading edge of the deflector shall be designed to have a plowing effect of at least 6" depth when the drag head is being operated. Appropriate instrumentation or indicator shall be used and kept in proper calibration to insure the critical "approach angle."

16) If adjustable depth deflectors are installed, they shall be rigidly attached to the drag head using either a hinged aft attachment point or an aft trunnion attachment point in association with an adjustable pin front attachment point or cable front attachment point with a stop set to obtain the 6" plowing effect. This arrangement allows fine-tuning the 6" plowing effect for varying depths. After the deflector is properly adjusted there shall be NO openings between the deflector and the drag head that are more than 4-inch by 4-inch.

17) Training - Personnel on Hopper Dredges: The USACE may, as necessary, conduct thorough training on measures of dredge operation that will minimize incidents of sea turtles and Gulf sturgeon. It shall be the goal of each hopper dredging operation to establish

operating procedures that are consistent with those that have been used successfully during hopper dredging in other regions of the coastal United States, and which have proven effective in reducing turtle/dredge interactions. Also, prior to the initiation of the project, Observers shall be familiar with the operation of the ODESS FC tool and proficient in its use so as to be able to prepare and transmit the results of their observations. ODESS system webinar training can be requested by contacting ODESS Support at ODESS@usace.army.mil or 1-877-840-8024. ODESS training could, in addition to the webinar training, consist of demonstrating the steps involved in setting up the FC tool on the dredge, loading Observer-collected data and attachments into the FC tool, submitting these data and attachments to the ODESS database, and/or navigating around the ODESS public website to view and pull down data and/or decision-making information for later analysis.

18) Sea Turtle and Gulf Sturgeon Trawling and Relocation (For Hopper Dredging Only): Sea turtle and Gulf sturgeon requirements vary with location and time of the year. Sea Turtle and Gulf Sturgeon Trawling and Relocation, as specified herein, will be at the option and in the discretion of the Government to aid in preventing sea turtle and Gulf sturgeon incidents during dredging operations with the approved turtle deflector in place. At this time, trawling shall be performed at all borrow sites in both State and Federal waters. Trawling shall begin at least 12 hours prior to dredging, and shall continue for the first seven (7) days of dredging to assess the existing conditions. Daily trawling results and photographs of all captures shall be sent to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. Based on the trawling results, the Mobile District, Planning Division, Coastal Environmental will make a decision on whether or not there is a need to continue trawling. In addition, trawling will be automatically required if Condition 12 as defined in the NMFS BO SER-2012-09304, in Appendix B, is met. If trawling continues after the initial seven (7) days then a daily trawl report along with photographs of all captures shall be sent to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, Ms. Caree Kovacevich, Caree.A.Kovacevich@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. Relocation trawling shall be performed so as to not interfere with dredging operations in progress.

a) Trawling Requirements: Relocation trawling shall be conducted to remove sea turtles (with the exception of leatherback sea turtles, which shall be photographed in the trawling net and immediately released in place, see below) and Gulf sturgeon from the borrow areas during dredging to help prevent entrainment by the dredge. In addition, giant manta rays may be present in the work areas. Observers shall not handle giant manta rays or take any physical measurements. If a giant manata ray is captured in the trawl it shall be photographed in the trawling net and immediately released in place. Methods and equipment shall be standardized including data sheets, nets, trawling direction to tide, length of station, length of tow, and number of tows per station. Sample forms are provided in Appendix B.

The trawler shall be equipped with 60-foot nets constructed from 8-inch mesh (stretch) fitted with mud rollers and flats as



specified in the Turtle Trawl Nets Specifications appended to the end of this Section. Paired net tows shall be made for 12 hours per day or night, as directed by the CO or his/her authorized representative. The tows shall be performed in shifts, to be determined by the COR or his/her authorized representative. The trawler shall be available for operation 24 hours a day. If two (2) separate trawlers are required, they shall operate side-by-side, as much as practicable. If multiple dredges are utilized, the trawler(s) shall be used for each dredge actively performing dredging operations. If the dredging operations are coordinated so that only one (1) dredge is actively dredging, trawler(s) shall be required for only that dredge. If dredging operations cease for a period of 12 hours or more, relocation trawling shall be conducted a minimum of 4 hours prior to resuming of dredging operations. Trawls shall be made such that the total width of the dredging is trawled. The trawler(s) shall be positioned ahead of the hopper dredge and as close to the hopper dredge as safely possible to give maximum coverage ahead of the dredging cut. The dredge and trawler(s) shall work closely together to implement techniques and procedures that will minimize the opportunity for turtles to enter the dredging path between the trawler(s) and dredge. NOTE: ALL TRAWLING ACTIVITIES, VESSELS AND EQUIPMENT SHALL COMPLY WITH THE CONTRACTOR'S ACCIDENT PREVENTION PLAN AND THE REQUIREMENTS OF EM 385-1-1, U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL. Trawling shall be conducted with and against the tidal flow at a speed between 2.5 to 3.0 knots using repetitive 15- to 30-minute (total time) trawls in the borrow or other work area. Trawl tow-time duration shall not exceed 30 minutes (doors in - doors out) and trawl speeds shall not exceed 3.5 knots. Positions at the beginning and end of each tow shall be determined from the Global Positioning System (GPS) equipment. Tow speed shall be recorded at the approximate midpoint of each tow. Acceptable GPS criteria shall be in accordance with EM 1110-1-1003, paragraph 5.3 and Table 5-1. This EM 1110-1-1003 can be located at the following Website: 4 <http://www.hnd.usace.army.mil/techinfo> or can be purchased directly from the Government Printing Office by calling (202) 512-1800. The postal address is: Superintendent of Documents, P. O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, or on line at <http://bookstore.gpo.gov/>.

b) Trawler Reporting: At the end of each day, a report (including details about the tow, details about the turtles/sturgeons relocated, and all required photographs in .JPG or .PDF) shall be emailed by the Contractor to USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil), Ms. Caree Kovacevich, [Caree.A.Kovacevich@usace.army.mil](mailto:Caree.A.Kovacevich@usace.army.mil), and Ms. Angelia Lewis, [Angelia.V.Lewis@usace.army.mil](mailto:Angelia.V.Lewis@usace.army.mil). The results of the daily trawling shall be recorded on the Trawling Report and submitted daily with photographs of all captures. Each relocation shall be identified as Project Capture # and identified if it is a project recapture. Sample forms are provided in Appendix B. Following completion of the project, an electronic copy of the trawling reports shall be forwarded to USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil) and the COR within 10 working

days of dredging completion.

c) Water Quality and Physical Measurements: Water temperature measurements shall be taken at the water surface each day using a laboratory thermometer. Weather conditions shall be recorded from visual observations and instruments on the trawler. Weather conditions, air temperature, wind velocity and direction, sea state-wave height, and precipitation shall be recorded on the Trawling Report. Samples forms are provided in Appendix B. High and low tides shall be recorded. Samples forms are provided in Appendix B.

d) Approved Sea Turtle Trawling and Relocation Supervisor: Trawling shall be conducted under the supervision of a crewmember, whom possesses the required permits for handling endangered species, experienced in sea turtle capture, or is a NMFS-approved Observer. A letter of approval from NMFS shall be provided to the CO or his/her authorized representative as well as in the EPP prior to commencement of trawling. NMFS POC is Mr. Max Tritt, by phone 1-727-866-3756 or by email at Max.Tritt@noaa.gov or through the Greater Atlantic Fisheries Office (GARFO) website at: <http://www.greateratlantic.fisheries.noaa.gov/protected/esaobserver/index.html>.

e) Repair and Replacement of Damaged Trawl Nets: The Contractor, at the time of mobilization, shall provide trawl nets, which meet the requirements specified in the Turtle Trawl Net Specifications at the end of this section. Trawl nets that are damaged shall be repaired or replaced by the Contractor at no additional expense to the Government. Tools, supplies and materials for repairing nets shall be kept aboard the trawler. In the event of damage to trawl nets, one hour will be allowed to either repair or replace them. The Contractor shall have replacement nets immediately available at all times, to insure that the dredging work is not adversely delayed due to trawler down-time for replacing damaged nets. It is recommended that a second set of replacement nets be available aboard the trawler.

f) Equipment Breakdown: The Contractor will be placed in a non-pay status when trawling equipment breakdown is such that the trawler does not operate during the day. Pay time will resume when trawling operations recommence.

g) Suspension of Dredging and Relocation Trawling: Should there be a tearing of nets, or breakdown of other equipment that would cause the trawler to leave the area where dredging is underway during any period of time where relocation trawling is required, the dredge may continue to operate for up to 48 hours, as long as no turtles or Gulf sturgeon incidents occur, and subject to the discretion of the CO. Should there be dangerously high seas that would cause the trawler to leave the dredging area when relocation trawling is required, the dredge may continue to operate, as long as no turtle or Gulf sturgeon incidents occur, and subject to the discretion of the CO.

h) Turtle Excluder Devices: Approval for trawling for sea turtles without Turtle Excluder Devices (TEDs) must be obtained from NMFS (contact Mr. Mike Barnette, by phone 1-727-824-5312 or

by email at Michael.Barnett@noaa.gov). Any necessary State or Federal clearances for the capture and relocation of sea turtles shall also be obtained. Approvals shall be submitted to the CO or his/her authorized representative and the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil prior to trawling.

i) Handling During Trawling: Sea turtles and sturgeon captured pursuant to relocation trawling shall be handled in a manner designed to ensure their safety and viability, and shall be released over the side of the vessel, away from the propeller, and only after ensuring that the vessel's propeller is in the neutral, or disengaged, position (i.e., not rotating). Handling and resuscitation guidelines are provided in Appendix B. All leatherback sea turtles are to be photographed in the trawler net and immediately released in place (are not to be relocated).

j) Captured Turtle and Gulf Sturgeon Holding Conditions: Turtles and Gulf sturgeon may be held briefly for the collection of important scientific measurements, prior to their release. Captured turtles shall be kept moist, and shaded whenever possible, until they are released, according to the requirements below. Captured Gulf sturgeon shall be held in a suitable well-aerated seawater enclosure until they are released according to the requirements below. Leatherback sea turtles are to be photographed in the trawler net and immediately released in place. Leatherback sea turtles shall not be handled or held for scientific measurements.

k) Incident and Release Time During Trawling - Turtles: Turtles shall be kept no longer than 12 hours prior to release and shall be released no less than three nautical miles (NM) from the dredging location (with the exception of leatherback sea turtles which may not be held or relocated). If satellite tags are to be affixed then turtles can be held for up to 24 hours prior to release. If two or more released turtles are later recaptured, subsequent turtle captures shall be released not less than five NM away. If it can be done safely and without injuries to the turtle, turtles may be transferred onto another vessel for transport to the release area to enable the relocation trawler to keep sweeping the dredge site without interruption. Minor skin abrasions resulting from trawl capture are considered non-injurious. Injured sea turtles shall be immediately transported by a NMFS approved protected species Observer permit to the nearest sea turtle and marine mammal rehabilitation facility such as the Institute for Marine Mammal Studies (IMMS), 10801 Dolphin Ln, Gulfport, MS 39503, 1-888-767-3657, or 1-228-896-9182 and email [contactus@imms.org](mailto:contactus@imms.org). Also notify the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, or BB 251-327-8650, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil), Ms. Caree Kovacevich, [Caree.A.Kovacevich@usace.army.mil](mailto:Caree.A.Kovacevich@usace.army.mil), and Ms. Angelia Lewis, [Angelia.V.Lewis@usace.army.mil](mailto:Angelia.V.Lewis@usace.army.mil).

l) Incident and Release Time During Trawling - Gulf Sturgeon: Gulf sturgeon shall be released immediately after capture, away from the dredge site or into already dredged areas, unless the

trawl vessel is equipped with a suitable well-aerated seawater holding tank, container, trough or pool where a maximum of one sturgeon may be held for no longer than 30 minutes before it must be released or relocated away from the dredge site by a NMFS approved Observer.

m) Scientific Measurements: When safely possible, all turtles (with the exception of leatherback sea turtles which shall be photographed in the trawler net and immediately released in place) shall be measured (standard carapace measurements including body depth), photographed, tagged, weighed, and a tissue sample taken prior to release. When safely possible, all Gulf sturgeon shall be measured (fork length and total length), photographed, tagged, weighed, and a tissue sample taken prior to release. Any external tags shall be noted and data recorded into the appropriate Observer forms. Sample forms are provided in Appendix B. Only NMFS approved protected species Observers or Observer candidates in training under the direct supervision of a NMFS-approved Observer shall conduct the tagging/measuring/weighing/tissue sampling operations.

n) Turtle Flipper External Tagging: All sea turtles captured by relocation trawling shall be flipper-tagged (external flipper tagging on leatherback sea turtles is not permitted or authorized) prior to release with external tags which shall be obtained prior to the start of dredging from the University of Florida's Archie Carr Center for Sea Turtle Research. The NMFS-approved protected species Observer shall flipper-tag with external tags (e.g., Inconel tags) captured sea turtles. Columbus crabs or other organisms living on external sea turtle surfaces may also be sampled and removed.

o) PIT Tagging: PIT tagging of sea turtles and Gulf sturgeon is not required to be done, if the NMFS-approved protected species Observer does not have prior training or experience in said activity; however, if the Observer has received prior training in PIT tagging procedures, then the Observer shall PIT tag the animal prior to release (in addition to the standard external tagging):

(i) Sea turtle PIT tagging must then be performed in accordance with the protocol detailed at NMFS' Southeast Fisheries Science Center's web page:  
<http://www.sefsc.noaa.gov/seaturtlefisheriesobservers.jsp>.  
PIT tagging leatherback sea turtles is not permitted or authorized. (See Appendix C on SEFSC's "Fisheries Observers" Web page)

(ii) Gulf sturgeon PIT tagging must then be performed in accordance with the protocol detailed at the NMFS SERO PRD Web site address: <http://sero.nmfs.noaa.gov/pr/protres.htm>.

(iii) PIT tags used must be sterile, individually wrapped tags to prevent disease transmission. PIT tags should be 125 kHz, glass-encapsulated tags, the smallest ones made.

p) Other Sampling Procedures: All other tagging and external or internal sampling procedures (e.g., bloodletting,

laparoscopies, anal and gastric lavages, mounting satellite or radio transmitters, etc.) performed on live sea turtles or live sturgeon are not permitted unless the Observer holds a valid sea turtle or sturgeon research permit authorizing this activity, either as the permit holder, or as designated agent of the permit holder. No sampling procedures are permitted or authorized on leatherback sea turtles regardless of research permits.

q) Turtle Incidents by Hopper Dredge: Dead Turtles: Upon removal of sea turtle and/or parts from the draghead or screening, Observers shall take photographs to document the characteristics of the turtle or turtle parts including but not limited to dorsal, ventral, anterior, and posterior views. For all photographs taken, a backdrop shall be prepared to include the name of dredge, Observer's company name, contract title, time, date, species, load number, location of dredging, and specific location of incident occurrence (draghead, screening, etc.). Carcass/turtle parts shall also be scanned for flipper and PIT tags. Any identified tags shall be recorded on the "Sea Turtle Incident Form" (example in Appendix B). A tissue sample shall be collected from any lethal sea turtle incidents and submitted under the process described in Protocol for Collecting Tissue Samples from Turtles for Genetic Analysis in Appendix B. All genetic samples collected shall be submitted to NMFS within 30 days of collection as described in paragraph 23 below, and verification of submittal shall be provided to the COR. After all data collection is complete, the sea turtle/parts should be marked (spray paint works well), weighted down and disposed of in accordance with the direction of the COR.

19) MONITORING AND RELOCATION OF SEA TURTLE NESTS

(Please note that the Contractor is not responsible for conducting any post construction monitoring.)

a) Monitoring Pre- and During Construction: Nesting surveys, marking, and potential relocation activities must be conducted daily in accordance with the Sea Turtle Monitoring Plan in Appendix B, weather permitting, for at least 100 days before the start of work and while construction activities are on-going. Monitoring is required during nesting and hatching season, April 15 - November 30 in areas where construction activities are on-going. If construction begins within 100 days after April 15, then monitoring will begin on April 15. Construction beginning anytime outside of 100 days after April 15 will be required to perform 100 days of preconstruction monitoring. The turtle monitoring will be conducted first thing in the morning, or by 9:00 am, in the immediate vicinity of work as well as in the area where work will be occurring within the next 100 days. Sea turtle nest relocation shall be performed according to the procedures outlined in Appendix B.

An archaeological monitor shall accompany the environmental monitor during all nest monitoring and relocations along the Phase III template area (STA 0+00.00 to STA 59+00.00). The archaeological monitor shall observe each turtle nest excavation and relocation and intervene as appropriate to protect any resource under their purview according to APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS. Under no circumstances shall an environmental monitor work perform monitoring or

relocation activities from STA 0+00 to STA 59+00 without being accompanied by the project archaeological monitor.

This work may be conducted on a utility task vehicle (UTV) if authorized in the Scientific Research and Collecting Permit. The Contractor shall specifically include language in their Scientific Research and Collecting Permit application that details their intent and procedures for relocating turtle nest eggs using a UTV in order to ensure a timely relocation and to reduce stress on the eggs due to heat or other environmental conditions.

Monitoring will include investigating nest activities, marking the nest, relocation of nests that are in harm's way from the project activities, and filling out the Sea Turtle Crawl Datasheet.

The Contractor shall at all times keep construction activities under surveillance, management, and control by trained individuals with proven sea turtle experience and identification skills and according to the requirements outlined in the USFWS BO (see Appendix B) to prevent impacts to sea turtles, their nests, and hatchling sea turtles. Turtle nest locations shall be monitored more closely during the hatching season, beginning the 50th day from the initial discovery, to ensure that there are no obstructions blocking the hatchlings direct path to the water. (see the Sea Turtle Monitoring Plan Appendix B). In order to prevent disturbance to nesting shorebirds, monitoring of sea turtles should be done in the morning prior to the required shorebird monitoring as described in paragraph 27 below. Daily monitoring reports shall be emailed daily to the following USACE staff Mr. Nathan Lovelace at Nathan.D.Lovelace@usace.army.mil, Mr. Stephen Reid at Stephen.H.Reid@usace.army.mil, USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. Along with the daily monitoring reports, Monitors should also fill out and submit turtle monitoring data in an Excel file format in accordance with the data requirements listed in Appendix B: Monitoring and Adaptive Management Turtle Monitoring Data.

b) Turtle Nest Relocation: Nests that require relocation must be relocated no later than 9:00 a.m. If nests are not relocated prior to 9:00 am then further consultation is required and the authorized Monitor shall immediately contact the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260 and USFWS, Mr. Paul Necaize, 228-493-6631. Turtle nests that are laid during the day should be relocated as soon as the egg laying event has been completed. Approved, designated relocation areas are shown in the Environmentally Sensitive Areas Plan Drawing Ref CB-110.

The Contractor must have at least two total approved persons to conduct sea turtle monitoring and relocations, but only one person per shift is required. The Monitors must possess the required State of Mississippi permit for handling endangered species. The State permit must be obtained from the Mississippi Museum of Natural Science (MMNS) in coordination with the USFWS (the permit can be found at: [https://www.mdwfp.com/media/3354/scientific\\_collecting\\_permit\\_application.pdf](https://www.mdwfp.com/media/3354/scientific_collecting_permit_application.pdf)). There is an agreement between the MMNS and

the USFWS, called a Memorandum of Understanding, which gives the MMNS the authorization to issue permits for qualified individuals to handle/perform research, etc., for threatened and endangered species. A Federal permit from the USFWS is not required, as the USFWS issued BO to USACE has language to cover the USACE and their Contractor's for turtle relocations. A copy of the USFWS BO in its entirety can be found on the USACE MsCIP's website at: [http://www.sam.usace.army.mil/Portals/46/docs/program\\_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf](http://www.sam.usace.army.mil/Portals/46/docs/program_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf) in Appendix N of the MsCIP Final Supplemental Environmental Impact Statement (FSEIS). The Contractor is responsible for compliance with the BO as applicable.

In addition, a Scientific Research and Collecting Permit must be obtained from the NPS prior to the start of any turtle monitoring. The POC for the NPS Scientific Research and Collecting Permit is Ms. Jolene Williams, 228-323-3176, [Jolene\\_Williams@nps.gov](mailto:Jolene_Williams@nps.gov). All permits obtained for relocation must be submitted in the EPP. General turtle nest relocation area siting and preparation guidelines are described below. Additional information for turtle monitoring and relocation requirements can be found in the Turtle Monitoring Plan, see Appendix B.

(i) Sea Turtle Nest Relocation Area Siting Guidelines:

- 1) Relocation areas shall be at least 2 acceptance sections (400 ft) away from an active work zone.
- 2) Relocation areas shall be outside of a 120 day window of any Contractor work zones assuming a 30,000 cy per day pumping rate.
- 3) Relocation area shall be located approximately 150 ft back from the construction berm crest on the Gulf of Mexico side of the fill template.
- 4) Pipe that is laid parallel to the shoreline shall be set at least 75 ft back from the rear limit of the relocation area (see Pipeline Placement Detail in Appendix B).
- 5) Relocation areas shall be actively managed and coordinated by the COR.

(ii) Relocation Area Preparation Guidelines:

- 1) Relocation areas will be tilled to a depth of 18" prior to receiving eggs.
- 2) Specialized equipment is not required for tilling the relocation areas.
- 3) A ten (10) foot buffer shall be staked out around all active relocation areas.
- 4) Relocation areas within the newly constructed fill template shall be tilled and staked a minimum of twenty-four (24) hours prior to nest relocations in that area.

c) Beach Profile Survey at Turtle Nesting/False Crawl Locations: An elevation profile shall be obtained through an identified sea turtle nesting site or false crawl with a bearing perpendicular to the average shoreline orientation by a person authorized under the MMNS permit. The seaward limit of the

profile should begin at the -2.0 foot contour and continue landward a minimum of 150 feet but no less than 75 feet landward of the nesting site or landward extent of the false crawl track; however, the transect shall terminate at any substantial standing water or at the dense vegetation line landward of the nest. Points along the profile should be spaced such that there is no more than 0.5 feet difference in elevation but no more than 15 feet between points along the profile. Additionally, a point shall be located at the centroid of the nesting site or the false crawl track. Points should be collected by using a high-precision real-time kinematic (RTK) GPS. Positioning data shall be referenced to Mississippi State Plane East, NAD 83 HARN, U.S. Survey feet and NAVD88 (Geoid 12A), U.S. Survey feet. Survey control, accuracy, and procedure shall be in accordance with EM 1110-1-1005. Survey information shall be emailed to the following USACE staff, Mr. Nathan Lovelace at Nathan.D.Lovelace@usace.army.mil, Mr. Stephen Ried at Stephen.H.Reid@usace.army.mil, and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil

d) Sediment Sample at Turtle Nesting/False Crawl Locations: A sediment sample shall be obtained by an authorized and permitted Observer at the centroid of the nesting site or the false crawl track. Care should be taken to not harm the eggs at the nesting site during the collection. Each sample will include approximately one pint of material and will be labeled with the date and site reference. Samples will be turned into Mr. Nathan Lovelace (Nathan.D.Lovelace@usace.army.mil) for analysis. Samples shall be contained in a NASCO Whirl-pak, 18 oz/532 mL, write-on bag (part no. 99100159). No lab work is required by the Contractor.

e) All turtle monitoring information collected shall be incorporated into an electronic database, using the "Collector for ArcGIS" application (<http://doc.arcgis.com/en/collector/>) for smart devices. It is recommended to use the latest generation of iPads (e.g. iPad Air or later) to run this application. It is also recommended to use an iPad containing Cellular (Wi-Fi + Cellular Model) service to benefit from the GPS hardware within. A walkthrough of how to use the application will be provided to the Contractor.

(i) The Contractor or their subcontractor shall keep a copy of all collected turtle monitoring information collected and required in the Monitoring and Adaptive Management Turtle Monitoring Data found in Appendix B in an Excel spreadsheet until all final reports are submitted and accepted by the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil.

(ii) In the event hardware or software problems prevent the storage or transmission of the collected data to the application system all turtle monitoring information required in the Monitoring and Adaptive Management Turtle Monitoring Data shall be collected and documented in an Excel spreadsheet and submitted to USACE, Mobile District, Chief of Coastal



Environmental, PD-EC, Ms. Lekesha Reynolds,  
Lekesha.W.Reynolds@usace.army.mil.

20) Collateral or "Piggy Back" Research: Any sea turtle research activities proposed by the Contractor, or outside parties, to be conducted in association with USACE funded actions, including endangered species monitoring, relocation trawling operations, or use of turtles acquired by these operations shall comply with the following general requirements, and any specific requirements developed by the Corps on a case-by-case basis as requests are received:

- a) The USACE shall be given at least 60 days to review and comment on any such research proposals.
- b) No such research shall be conducted without the express consent of USACE.
- c) The USACE shall be given the opportunity to review and comment on any potential publication or interpretation of resulting data prior to release.
- d) The party or parties conducting the research shall possess a valid research permit pursuant to Section 10 of the Endangered Species Act; and will be responsible for any other Federal, State or local permits or authorizations required, including any requirement of the NEPA.
- e) Any injuries, including lethal incidents resulting from sea turtle handling activity beyond USACE contract requirements shall be the responsibility of the researcher.
- f) Acknowledgment that the research was conducted with the assistance of USACE shall be included in any resulting publication or report, at the discretion of USACE.
- g) Research activities shall not hinder USACE contracted operations, nor result in any additional cost to the Government.
- h) Research personnel not directly employed by USACE Contractors or subcontractor shall not board contracted vessels without signing an appropriate waiver of liability and/or other documents required by USACE.

21) PIT-Tag Scanning: All sea turtles captured by relocation trawling (or dredges) shall be thoroughly scanned for the presence of PIT tags (scanning of leatherback sea turtles is not permitted or authorized) prior to release using a multi-frequency scanner powerful enough to read multiple frequencies (including 125, 128, 134 and 400-kHz tags) and read tags embedded deep in muscle tissue (e.g., manufactured by Trovan, Biomark, or Avid). Turtles whose scans show they have been previously PIT tagged shall be tagged externally on the flipper. The data collected (PIT tag scan data and external tagging data) shall be submitted to NOAA, NMFS, Southeast Fisheries Science Center, Attn: Ms. Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. All data collected shall be submitted in electronic format within 60 working days to Lisa.Belskis@noaa.gov and Sheryan.Epperly@noaa.gov.

- a) Sea turtle external flipper tag and PIT tag data generated and collected by relocation trawlers shall also be submitted to

the Cooperative Marine Turtle Tagging Program (CMTTP), on the appropriate CMTTP form, at the University of Florida's Archie Carr Center for Sea Turtle Research at:  
<https://accstr.ufl.edu/resources/tagging-program-cmttp/>. The form is available in Appendix B.

b) Gulf sturgeon data (PIT tag scan data and external tagging data) shall be submitted within 60 days of project completion to NOAA, National Marine Fisheries Service, Protected Resources Division, 263 13th Avenue South, St. Petersburg, Florida 33701, or by fax: (727)824-5309; or by e-mail: [takereport.nmfs@noaa.gov](mailto:takereport.nmfs@noaa.gov), Attn: Dr. Stephanie Bolden.

22) Handling Fibropapillomatose Turtles: NMFS-approved protected species Observers are not required to handle or sample the viral fibropapillomatose tumors if they believe there is a health hazard to themselves and choose not to. When handling sea turtles infected with fibropapilloma tumors either: 1) clean all equipment that comes in contact with the turtle (tagging equipment, tape measures, etc.) with mild bleach solution, between the processing of each turtle or 2) maintain a separate set of sampling equipment for handling animals displaying fibropapilloma tumors or lesions.

23) Requirement and Authority to Conduct Tissue Sampling for Genetic Analyses: NMFS-approved protected species Observers onboard a relocation trawler or hopper dredge shall, on all live or dead sea turtles and Gulf sturgeon captured by relocation trawling or dredging, be tissue-sampled prior to release (with the exception of leatherback sea turtles, which shall not have tissue samples taken).

a) Sea turtle tissue samples shall be taken in accordance with NMFS' Southeast Fisheries Science Centers' (SEFSC) procedures for sea turtle genetic analyses (Appendix II of the NMFS BO), See Appendix B and copy of NMFS BO at [http://www.sam.usace.army.mil/Portals/46/docs/program\\_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf](http://www.sam.usace.army.mil/Portals/46/docs/program_management/mscip/docs/Appendix%20N%20-%20Biological%20Assessment%20and%20Biological%20Opinions.pdf) ). Tissue samples shall be properly stored and mailed within 7 days of completion of dredging project, to NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, Attn: Ms. Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. Tissue sampling of live leatherback sea turtles is not permitted or authorized.

b) Gulf sturgeon tissue samples (soft fin clips) shall be taken in accordance with NMFS Protocol for Use of Shortnose, Atlantic, Gulf and Green Sturgeons in Attachment A of the NMFS BO. A copy of the document can be found at: [http://www.nmfs.noaa.gov/pr/pdfs/species/kahn\\_mohead\\_2010.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/kahn_mohead_2010.pdf). Submission of genetic tissue samples must be coordinated with Dr. Brian Kreiser, Department of Biological Sciences, 118 College Drive Suite 5018, University of Southern Mississippi, Hattiesburg, MS 39406, 601-266-6556. Additional questions shall be directed to Jason Rueter, the NMFS PRD species coordinator for Gulf sturgeon, 727-824-5312. Samples must be submitted within 30 days after collection.

24) During the sea turtle nesting season, construction equipment and pipes shall be stored in a manner that will minimize impacts to sea turtles to the maximum extent practicable.

25) Equipment Lighting: During the sea turtle nesting season (May 1 to November 30) all lighting aboard hopper dredges and hopper dredge pumpout barges operating within 3 nautical miles (nmi) of sea turtle nesting beaches, and all onshore and nearshore lighting shall be limited to the minimal lighting necessary to comply with U.S. Coast Guard, Occupational Safety and Health Administration (OSHA) requirements, and COE EM 358-1-1. All non-essential lighting on the dredge, pumpout barge, nearshore, and onshore shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to minimize illumination of the water and nesting beach to reduce potential disorientation effects on female sea turtles approaching the nesting beaches and sea turtle hatchlings making their way seaward from their natal beaches.

26) Report Submission: Following project completion, and within 30 working days, an endangered species Observer/trawling and relocation final report shall be submitted to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, Lekesha.W.Reynolds@usace.army.mil, 109 St. Joseph Street, Mobile, Alabama 36602. Reports shall contain information on project location (specific borrow area/placement area), start-up and completion dates, cubic yards of material dredged, problems encountered, incidents and sightings of protected species, mitigative actions taken (if relocation trawling, the number and species of turtles and sturgeon relocated with photographs), screening type (inflow, overflow) utilized, any modifications or repairs made on inflow/outflow screens and draghead deflectors, daily water temperatures, name of dredge, names of endangered species Observers, and percent Observer coverage.

27) Protection of Shorebirds: At all times during construction, the Contractor shall keep construction activities under surveillance, management, and control by a trained or experienced bird Monitor, per the USFWS BO (see Appendix B), to prevent impacts to shorebirds and/or their nests. Several State and/or Federally protected species of birds (Piping plover, Least terns, Snowy plovers, etc.) may occur in the construction area. There are two types of bird surveys that shall be conducted, and are described in subsections (a) and (b) below. The survey for nesting shorebirds is a daily survey. From March 1st to September 30th, daily surveys for nests on the ground within placement areas shall be conducted. The surveys for the Piping plover, Red knot, and other wintering or migratory birds will occur in all months except June, and it should be done at a minimum of once a week. The Contractor may be held responsible for harming or harassing the birds, their eggs or their nests.

a) Monitoring for Nesting Birds: Daily shorebird monitoring for nesting birds and nest location identification shall be conducted for 14 days prior to the commencement of work, if work begins within nesting season, and continue until the nesting season ends. Monitoring can cease upon the completion of construction activities, if work finishes prior to the end of nesting season. The nesting bird season is from March 1st to September 30th. Monitoring shall occur during the dawn or dusk time frames as specified in the Shorebird Monitoring Plan in Appendix B. Monitoring shall be conducted by a trained bird Monitor, approved by the CO and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil. The Contractor is not

responsible to conduct any post construction monitoring. Monitoring for nesting birds will focus on colonial and solitary shorebird species as described in the Shorebird Monitoring Plan in Appendix B, but will also report on other birds like osprey and eagle. Surveys shall be conducted per guidance in the Shorebird Monitoring Plan in Appendix B and using appropriate ecological survey procedures (for example, see "Breeding Season Population Census Techniques for Seabirds and Colonial Waterbirds Throughout North America" at URL: <http://www.mp2-pwrc.usgs.gov/cwb/manual>). Data collection requirements and documentation format are listed in Appendix B: Monitoring and Adaptive Management Shorebird Monitoring Data.

b) Monitoring for Migratory Birds: Surveys shall be conducted weekly from July through May to assess the presence of wintering migrants, specifically the Piping plover and Red knots as well as colonial (Least terns, skimmers, etc.) and solitary (Wilson's plover, Snowy plover, etc.) birds. The Contractor's list of bird Monitors, along with their certifications and qualifications, shall be listed in the EPP.

c) All bird monitoring information collected shall be incorporated into an electronic database, using the "Collector for ArcGIS" application (<http://doc.arcgis.com/en/collector/>) for smart devices. All bird monitoring information collected shall be "synced" to the database at the end of each day of monitoring. It is recommended to use the latest generation of iPads (e.g. iPad Air or later) to run this application. It is also recommended to use an iPad containing Cellular (Wi-Fi + Cellular model) service to benefit from the GPS hardware within. A walkthrough of how to use the application is included in Appendix B.

(i) The Contractor or their subcontractor shall keep a copy of all collected bird monitoring information and as required in the Monitoring and Adaptive Management Shorebird Monitoring Data found in Appendix B in an Excel spreadsheet until all final reports are submitted and accepted by the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil).

(ii) In the event hardware or software problems prevent the storage or transmission of the collected data to the application system all bird monitoring information required in the Monitoring and Adaptive Management Shorebird Monitoring Data shall be collected and documented in an Excel spreadsheet and submitted to USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, [Lekesha.W.Reynolds@usace.army.mil](mailto:Lekesha.W.Reynolds@usace.army.mil) and Ms. Angelia Lewis, [Angelia.V.Lewis@usace.army.mil](mailto:Angelia.V.Lewis@usace.army.mil).

(iii) An email shall be sent at the end of each monitoring event to Ms. Angelia Lewis at [Angelia.V.Lewis@usace.army.mil](mailto:Angelia.V.Lewis@usace.army.mil) summarizing the bird monitoring information collected. In addition, an email shall be sent if no monitoring information was collected or if the daily monitoring event did not occur.

d) In coordination with bird Monitors, furrowing and/or flagging may be performed as a form of shorebird nesting

deterrent. Other means of deterring birds may be considered for use at the discretion of the COR. The Contractor will submit alternate bird deterrents to the COR for coordination with the Agencies and project team, preferably before the pre-construction meeting. Alternate means of deterring birds shall not be deployed unless approved in writing by the COR.

A sand fence, or construction fence should be placed at the northern extent of any furrowed areas. A furrowing plan must be developed by the Contractor and submitted in the EPP to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil, at least 7 days before the preconstruction meeting.

e) Buffer Zones: A temporary 300-foot buffer shall be created around any nesting birds. The extent of bird nesting buffers may be adjusted at the discretion of the USFWS and/or NPS through coordination with the COR. Buffer areas shall be adequately marked with signs around the perimeter and left undisturbed until nesting is completed or terminated, and the chicks fledge. Construction activities, including movement of vehicles, are prohibited in the buffer zone. Buffer zones shall be increased if birds appear agitated or disturbed by construction or other activities in the adjacent area. If buffer zones need to be temporarily adjusted or reduced, the COR shall coordinate with the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil, or alternate contact Chief of Environment & Resources Branch, Ms. Jennifer Jacobson, Jennifer.L.Jacobson@usace.army.mil. For situations that require temporary adjustments, the shorebird Monitor can make a recommendation of what is the minimum size of the buffer area needed to ensure the birds are not disturbed or harassed from their nest, but still allows the continuation of work. Justification of any buffer extents shall be documented in an email and sent to the individuals listed above as soon as possible.

f) Equipment: Travel corridors and staging areas outside of buffer zones near nesting sites shall be coordinated with the COR, the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil, for further coordination with the USFWS and NPS. These areas shall be designated and marked outside the buffer areas. Heavy equipment, other vehicles, or pedestrians may transit past nesting areas in the corridors.

g) Shorebird Signs: If nesting occurs within the construction area, the Contractor shall place and maintain a bulletin board in the contracting shed with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that "BIRD NESTING AREAS ARE PROTECTED BY THE MIGRATORY BIRD TREATY ACT".

h) Reporting: The COR shall be advised of the resource "findings" or "no findings immediately following the daily survey. Any observed nesting activity shall be reported immediately to the COR and USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds,

251-690-3260, or BB 251-327-8650, Lekesha.W.Reynolds@usace.army.mil and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. Notification of nesting interference from construction activities shall be reported immediately to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, 251-690-3260, or BB 251-327-8650, or as an alternate POC, Chief of Environment & Resources Branch, PD-EC, Ms. Jennifer Jacobson at 251-690-2724 office or BB 251-472-7589 and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. A daily report of shorebird monitoring and nest activity shall be kept by the Contractor's shorebird Observer. Daily logs shall summarize each shorebird species observed and provide a rough estimate of numbers of each species, the location of species (GPS coordinates), and their activity (e.g. foraging, resting, nesting, courtship behavior).

i) Report Submission: The results of the daily nesting shorebird monitoring shall be forwarded daily, and the weekly migratory shorebird report shall be forwarded weekly to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil; P.O. Box 2288, Mobile, Alabama 36628-0001 and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil. Following completion of the project, a summary report of the nesting shorebird and migratory shorebird monitoring activities shall be forwarded within 30-days to the USACE, Mobile District, Chief of Coastal Environmental, PD-EC, Ms. Lekesha Reynolds, Lekesha.W.Reynolds@usace.army.mil and Ms. Angelia Lewis, Angelia.V.Lewis@usace.army.mil.

### 3.6 MAINTENANCE OF POLLUTION CONTROL FACILITIES DURING DREDGING AND PLACEMENT ACTIVITIES:

During the life of this contract, the Contractor shall maintain all facilities constructed for pollution control as long as the operations creating the particular pollutant are being carried out or until the material concerned has become stabilized to the extent that pollution is no longer being created. During the construction period the Contractor shall conduct frequent training courses for their maintenance personnel. The curricula should include methods of detection of pollution, familiarity with pollution standards and measures for prevention or mitigation of environmental pollution.

### 3.7 SANITATION:

The Contractor must provide suitable sanitation devices for the proper storage of all sanitary sewage. The Contractor shall ensure that all floating plants operate according to an approved waste management plan as required by 33 CFR Part 151. The dumping of sanitary sewage effluent and/or solids into the navigable waters surrounding the job is strictly forbidden.

### 3.8 Turtle Trawl Net Specifications

DESIGN: 4 Seam, 4 Legged, 2 Bridal Trawl Nets  
WEBBING: 4 inch bar, 8 inch stretch  
Top - 36 Gauge Twisted Nylon Dipped  
Side - 36 Gauge Twisted Nylon Dipped  
Bottom - 84 Gauge Braided Nylon Dipped  
NET LENGTH: 60 ft. from cork line to cod end

BODY TAPER: 2 to 1  
WING END HEIGHT: 6 feet  
CENTER HEIGHT: Dependent on depth of trawl - 14 to 18 feet  
COD END: Length 50 meshes x 4 inches equals 16.7 feet  
Webbing 2 inch bar, 4 inch stretch, 84 gauge braid nylon  
Dipped, 80 meshes around, 40 rigged meshes with  $\frac{1}{4}$  x 2  
inch choker rings, 1 each  $\frac{1}{2}$  x 4 inch at end  
Cod End Cover - none  
Chaffing Gear - none  
HEAD ROPE: 60 ft  $\frac{1}{2}$  inch combination rope (braid nylon with  
stainless cable center)  
FOOT ROPE: 65 ft  $\frac{1}{2}$  inch combination rope  
LEG LINE: Top - 6 ft, Bottom - 6 ft  
FLOATS: Size - Tuna Floats (football style), Diameter - 7  
Inches; Length - 9 inches; number 12 each;  
Spacing - center of top net 2 inches apart  
MUD ROLLERS: Size - 5 inch Diameter, 5.5 inch length  
Number - 22 each; spacing - 3 ft attached with  $\frac{3}{8}$  inch  
Polypropylene rope (replaced with snap on roller when  
broken)  
TICKLER CHAINS: NONE (Discontinued - but previously used  $\frac{1}{4}$   
inch x 74 ft galvanized chain)  
WEIGHT: 20 ft of  $\frac{1}{4}$  inch galvanized chain on each wing, 40 ft  
per net looped and tied  
DOOR SIZE: 7 ft x 40 inches (or 8 ft x 40 inches); Shoe - 1 inch  
X 6 inch: bridles -  $\frac{3}{8}$  inch high test chain  
CABLE LENGTH: (Bridle Length, Total):  $\frac{7}{16}$  inch x 240-300 ft  
varies with bottom conditions  
FLOAT BALL: NONE  
LAZY LINES: 1 inch nylon  
PICKUP LINES:  $\frac{3}{8}$  inch polypropylene  
WHIP LINES: 1 inch nylon

### 3.9 Submerged Pipeline Buoy Lines

The wire that secures the buoy to a submerged pipeline can have enough slack to cause a loop in the line and entangle sea turtles causing accidental drownings. In order to prevent sea turtle drowning due to entanglement in the wire that secures the buoy to submerged pipelines, one of three options must be implemented:

1. Light weight chain
2. Non-looping wire rope
3. Plastic sheathing around nylon rope to prevent looping

The option identified must be included in the Environmental Protection Plan.

END OF SECTION

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SECTION 35 20 23.13

NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM  
SCOW - MONITORING PROFILE

17 November 2016

PART 1 GENERAL

1.1 DESCRIPTION

The work under this contract requires use of the National Dredging Quality Management Program (DQM) to monitor the scow's status at all times during the contract, and manage data history.

This performance-based specification section identifies the minimum required output and precision and instrumentation requirements. The requirements may be satisfied using equipment and technical procedures selected by the Contractor.

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office responsible for review of the submittal for the Government. The following shall be submitted in accordance with Section 01 33 00, "SUBMITTAL PROCEDURES":

SD-01 Preconstruction Submittals

Dredge Plant Instrumentation Plan (DPIP); G, OP

SD-06 Test Reports

Data Appropriately Archived Email; G, OP

SD-07 Certificates

Letter of National Dredging Quality Management Program  
Certification; G, OP

1.3 PAYMENT

No separate payment will be made for installation, operation and maintenance for the DQM certified system as specified herein for the duration of the dredging operations; all costs in connection therewith will be considered a subsidiary obligation of the Contractor and covered under the contract unit price for beach fill in the bidding schedule.

1.4 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM CERTIFICATION

The Contractor is required to have a current certification from the DQM for the scow instrumentation system to be used under this contract. Criteria for certification shall be based on the most recent specification posted on

the DQM website (<http://dqm.usace.army.mil/Specifications/Index.aspx>), Compliance with these criteria shall be verified by on-site quality assurance (QA) checks conducted by DQM Support Center Data Acquisition and Analysis Team, and by periodic review of the transmitted data. If a system is installed specifically for this contract, the QA checks should take place prior to any material being loaded into the scow to insure that it is capable of transmitting quality data to the DQM database or with prior approval of local district, during the first load for each scow, and subsequent loads as is necessary to verify compliance. A DQM Certification is valid for one year from the date of certification and is contingent upon the system's ability to meet the performance requirements as outlined in paragraphs 3.3 and 3.5. If issues with data quality are not corrected within 48 hours, the system certification shall be revoked and additional QA checks by the Data Acquisition Team may be necessary.

Annual DQM Certification shall be based on:

A series of QA checks as described in paragraph 3.4 "Compliance Quality Assurance Checks"

Verification of data acquisition and transfer (paragraph 3.3)

Review of the Dredge Plant Instrumentation Plan (DPIP) as described in paragraph 1.5

The dredging contractor shall have personnel who are familiar with the system instrumentation and who have the ability to recalibrate the sensors on site during the QA process. The dredging contractor shall coordinate pickup times and locations and provide transportation to and from any platform with a DQM system to team personnel in a timely manner. The dredging contractor shall also have on site for the QA checks a tug capable of towing the scow. As a general rule, Data Acquisition and Analysis Team personnel will come with PPE consisting of hardhats, steel toe boots, and life jackets. If additional safety equipment is needed, such as eye protection, safety harnesses, work gloves or personal location beacons, these items shall be provided to the team while on site. The Contractor shall submit a test data package to the DQM Database from the system on each scow and have it accepted by the DQM Support Center prior to scow compliance checks. The Contractor shall also submit data collected during the QA Checks from the scow monitoring system to the DQM database and the Data Acquisition Team personnel while on site. It is the dredging contractor's obligation to inform the QA team if the location designated for the QA checks has any site specific safety concerns prior to their arrival on site.

The owner or operator of the scow shall contact DQM at [DQM-AnnualQA@rpsgroup.com](mailto:DQM-AnnualQA@rpsgroup.com) on an annual basis, or at least three weeks prior to the proposed beginning of dredging, to schedule QA checks. This notification is meant to make the Data Acquisition Team aware of a target date and the contract on which the plant will be used. At least one week prior to the target date, the dredging contractor shall contact the Data Acquisition team and verbally coordinate a specific date and location. The contractor shall then follow-up this conversation with a written e-mail confirmation. The owner/operator shall coordinate the QA checks with all local authorities, including but not limited to, the local USACE contracting officer.

Re-certification is required for any yard work which produces modification to displacement (i.e. change in scow lines, repositioning or repainting

hull marks), modification to bin volume (change in bin dimensions or addition or subtraction of structure) or changes in sensor type or location; these changes shall be reported in the sensor log section of the DPIP. A system does not have to be transmitting data between jobs, however in order to retain certification during this period, the system sensors or hardware should not be disconnected or removed from the scow. If the system is powered down, calibration coefficients shall be retained.

#### 1.5 DREDGE PLANT INSTRUMENTATION PLAN (DPIP)

The Contractor shall have a digital copy of the DPIP on file with the National DQM Support Center. The Contractor shall also maintain a copy of the DPIP on a working dredge on site which is easily accessible to government personnel at all times. This document shall describe the sensors used, configuration of the system, how sensor data will be collected, how quality control on the data will be performed, and how sensors/data reporting equipment will be calibrated and repaired if they fail. A description of computed scow specific data and how the sensor data will be transmitted to the DQM Database shall also be included. The Contractor shall submit to the DQM Support Center any addendum or modifications made to the plan, subsequent to its original submission, prior to start of work.

The DPIP shall include the following as a minimum:

*(DPIP must have table of content in the following order)*

- Dredging Company
  - Scow Point of Contact
  - Telephone Number
  - Email address
- Scow Monitoring System Provider
  - Scow Monitoring System Point of Contact
  - Telephone Number
  - Email address
- Scow Name/ID
- Sensor repair, replacement, installation, modification or calibration methods
- Data reporting equipment
- Procedure for providing sensor data/computed data to DQM Database via e-mail
- System Power Supply
- System Battery Charge Method
- Documentation on how the contract number will be changed if the system is left on past the end of the contract
- System telemetry
- Dimensioned Drawings of the Scow
  - A typical plan and profile view of the scow showing:
    - Bin cross sections
    - Locations of required sensors referenced to:
      - fore and aft perpendicular

- bin length, depth, width, zero reference
  - external hull draft markings (latitudinal, longitudinal, keel)
  - each other
  - overall scow dimensions
- Criteria and method used to increment trip number
- Description of how the UTC time stamp is collected
- Positioning system
  - brand name and specifications
  - sampling rates for data acquisition (standard vs. disposal)
  - scow heading instrumentation brand name and specifications
  - instrument used to calculate COG
  - any calculation done external to the instrumentation
  - certificates of calibration and/or manufacturer certificates of compliance
  - A description of how scow speed is determined
- Hull status
  - Instrumentation brand name and specifications
  - Certificates of calibration and/or manufacturer certificates of compliance
  - Any calculation done external to the instrumentation
  - Criteria for determining hull open/closed
- Heading
  - Instrumentation brand name and specifications
  - Certificates of calibration and/or manufacturer certificates of compliance
  - Any calculation done external to the instrumentation
  - Criteria for determining heading
- Drafts
  - Instrumentation brand name and specifications
  - Certificates of calibration and/or manufacturer certificates of compliance
  - Any calculation done external to the instrumentation
  - Criteria used to determine draft
- Displacement
  - Method used by Contractor to calculate displacement based on fore and aft draft
  - Tables listing (fresh and salt water) displacement as a function of draft provided by a licensed marine surveyor/ naval architect independent of the contractor. The scaling between each interval in the table is determined by the designer of the table (which is determined by the shape of the scow), however units shall be reported, at a minimum, in ft and tenths of ft for draft and long tons for displacement.
  - These methods and tables must be an accurate reflection of the current configuration and displacement
- Contractor Data
  - Backup frequency
  - Backup method
  - Post processing

- Archive capability
- Documentation of:
  - test methods used by the Contractor to provide quality control of data
  - verification that the reported values are applicable for the sensor and application
- Quality Control Plan as per paragraph 3.5
  - Name of Quality Control Systems Manager
  - Procedures for checking collected data against known values
  - Procedures for verifying telemetry is functioning
- Log of sensor performance and modifications
- Log of Contractor data backup as per paragraph 3.2.6

Any changes to the computation methods during the contract shall be approved by the DQM Support Center prior to their implementation.

## PART 2 PRODUCTS (Not Applicable)

## PART 3 EXECUTION

### 3.1 SPECIFICATIONS FOR REPORTED DATA

The Contractor shall provide, operate and maintain all hardware and software to meet these specifications. The Contractor shall be responsible for replacement, repair and calibration of sensors and other necessary data acquisition equipment needed to supply the required data.

Repairs shall be completed within 48 hours of any sensor failure. Upon completion of a repair, replacement, installation, modification or calibration the Contractor shall notify the Contracting Office's Representative (COR). The COR may request re-calibration of sensors or other hardware components at any time during the contract as deemed necessary.

The Contractor shall keep a log of sensor repair, replacement, installation, modification and calibration in the on-site copy of the DPIP. The log shall contain a three-year history of sensor maintenance to include: the time of sensor failures (and subsequent repairs), the time and results of sensor calibrations, the time of sensor replacements, and the time that backup sensor systems are initiated to provide required data. It shall also contain the name of the person responsible for the sensor work.

Sensors installed shall be capable of collecting parameters within specified accuracies and resolutions indicated in the following subparagraphs.

With the exception of position and any value calculated, reported sensor values should represent a weighted average with the highest and lowest values not included in the calculated average for the given interval. The averaging routine used should be consistent across all event triggers. This information should be documented in the DPIP sections that say "Calculations done external to the instrumentation".

These data reporting requirements cover the collection of electronic data

on a scow through the entire dredging cycle. Disposal events can consist of both open water disposal and offloading. Open water disposal is the placement of material via bottom doors or split hull. Offloading is the placement of material via either hydraulic or mechanical means.

#### 3.1.1 Scow Name

Each scow shall be assigned a unique name that will remain constant from one dredging operation to the next.

#### 3.1.2 Contract Number

The USACE Assigned contract number for the project will be reported.

#### 3.1.3 Trip Number

A DQM trip number shall document the end of a disposal event for a given scow.

##### 3.1.3.1 Open Water Disposal

The trip number will be incremented at the completion of each disposal/removal of material from the scow. Each scow shall maintain a separate trip numbering sequence - i.e. each scow will start with a trip number of 1, that will be incremented by 1 each time that scow completes a disposal. The trip number must be calculated and repeatable based on a given logic; it may not necessarily correspond to the trip number logged aboard the dredge or tug. Efforts shall be made to include logic that avoids false trip number increments, while also not allowing the routine to miss any disposal events.

##### 3.1.3.2 Offloading

The trip number will be incremented at the completion of each disposal/removal of material from the scow. Each scow shall maintain a separate trip numbering sequence - i.e. each scow will start with a trip number of 1, that will be incremented by 1 each time that scow completes a disposal. The trip number must be calculated and repeatable based on a given logic; it may not necessarily correspond to the trip number logged aboard the dredge or tug. Efforts shall be made to include logic that avoids false trip number increments, while also not allowing the routine to miss any disposal events.

#### 3.1.4 Horizontal Positioning

Geographic coordinates of the vessel as indicated by the location of the GPS antenna. All locations shall be obtained using a Positioning System operating with a minimum accuracy level of 1 to 3 meters horizontal Circular Error Probable (CEP). Positions shall be reported as Latitude/Longitude WGS 84 in decimal degrees. West Longitude and South Latitude values are reported as negative.

#### 3.1.5 Date and Time

The date and time shall be reported to the nearest second and referenced to UTC time based on a 24 hour format; yyyy-mm-dd hh:mm:ss.

### 3.1.6 Hull Status

Hull status is meant to reflect a condition when material could be removed or released from the scow. *For this contract, hull status shall register closed prior to leaving the disposal area.*

#### 3.1.6.1 Open Water Disposal

An open split hull or open bottom door shall be indicated by reporting an "OPEN" value. A closed split hull or closed bottom door of a scow shall be indicated by reporting a "CLOSED" value. Open status shall be indicated as the bin starts to open and a closed status shall be indicated only once the bin is fully closed. For pocket scows, the Open/Closed status shall correspond to the compartment which is first to open and last to close.

#### 3.1.6.2 Offloading

For non-dumping scows, the "OPEN" value shall indicate that the bin is in the process of being unloaded, either by pumping or mechanical means.

### 3.1.7 Course

Scow course-over-ground (COG) shall be provided using industry standard equipment. The Contractor shall provide scow course over ground (to the nearest whole degree) with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

### 3.1.8 Speed

Scow speed-over-ground shall be provided in knots using industry standard equipment with a minimum accuracy of 1.0 knots and resolution to the nearest 0.1 knot.

### 3.1.9 Heading

Scow heading shall be provided using industry standard equipment. The scow heading shall be accurate to within 5 degrees and reported to the nearest whole degree, with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

### 3.1.10 Draft

All reported draft measurements shall be in feet, tenths and hundredths with an accuracy of + 0.1 foot relative to observed physical draft readings. The measurements shall be reported at a resolution of two decimal places (hundredths of a foot). Reported forward draft value shall be equal to the sum of the visual forward port and starboard draft mark readings divided by 2. Reported aft draft value shall be equal to the sum of the visual aft port and starboard draft mark readings divided by 2. Minimum accuracies are conditional to relatively calm water. Forward draft, aft draft and average draft will be reported. Sensors shall be placed at an optimum location on the scow to be reflective of observed physical draft mark readings at any trim or list. The sensor value reported shall be an average of at least 10 samples per event, remove at least one maximum value and one minimum value, and average the minimum 8 remaining values. When average draft is calculated for the purpose of determining displacement, significant digits for average draft shall be maintained such that if forward draft was 0.15 and aft draft was 0.1 then the average draft would be 0.125.

### 3.1.11 Displacement

Scow displacement shall be reported in long tons, based on the most accurate method available for the scow. The minimum standard of accuracy for displacement is interpolation from the displacement table, based on the average draft. For this contract the density of water used to calculate displacement shall be 1027 - 1030 kg/cubic meter and shall be used for an additional interpolation between the fresh and salt water tables. *The water density used is project/location specific. 1000 kg/m<sup>3</sup> (1g/cm<sup>3</sup>)- fresh water 1027 kg/m<sup>3</sup> - 1030 kg/m<sup>3</sup> (1.027g/cm<sup>3</sup> - 1.03g/cm<sup>3</sup>)- salt water*

### 3.2 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM SYSTEM REQUIREMENTS

Contractors DQM system shall be capable of collecting, displaying, and transmitting information to the DQM Database. The parameters which shall be reported to the DQM Database include: trip number, date and time, hull status, scow course, scow speed, scow heading, draft, and displacement. An easily accessible, permanent visual display on the scow shall show in real time the parameters collected by the system in the same units as data submitted to the DQM database. In the event a reported parameter is calculated based on multiple sensors, the sensor values as used in the equation shall be able to be viewed in addition to the required parameter. If a hardware problem occurs, or if a part of the system is physically damaged, then the Contractor shall be responsible for repairing it within 48 hours of determination of the condition.

#### 3.2.1 Telemetry

The Contractor may select any commercial satellite, cellular phone, or other data communications systems available, as long as it is capable of transmitting real time data, as well as enough additional band width to clear historically queued data when a connection is re-obtained. The telemetry system shall be always available and have connectivity in contract area. If connectivity is lost, unsent data shall be queued and transmitted upon restoration of connectivity. The data transition process from the scow to the DQM database must be automated. The data may be sent from the scow directly to the DQM database or to a shore based system. Data transmitted to the DQM Database should be raw data; any processing of the data conducted shore side shall be done using repeatable automated software or programming routine. A description of this process shall be included in the DPIIP.

#### 3.2.2 Data Reporting Frequency

Disposal activities shall be logged with high temporal and spatial resolution. Data shall be logged as a series of events. Each set of measurements (i.e. time, position, etc...) will be considered an event. All required information in paragraph 3.1 that are not an averaged variable (i.e. draft and ullage) shall be collected within one second of reported time. Data shall be measured with sufficient frequency by the scow system to resolve the events to the accuracy specified in the following table. Any averaged variable must be collected and computed within this sampling interval. Event Types "Sailing", "Loading/Stationary" and "Offloading" and "Open Water Disposal" are triggered by a time criteria; the criteria should be consistent across the "Sailing" and "Open Water Disposal" event types and should not change for the data collected on a given scow. This criterion should be documented by the contractor in the DPIIP.



Event Type	Event Trigger Descriptions	Event Time Resolution	Event Position Resolution
Loading/ Stationary	<b>No change in position with hull status closed</b> An elapsed time of 1 hour since the last event <b>No change in position with hull status open</b> -----NONCLOSURE----- In the event a scow has completed an open water disposal and transited back to a holding station without closing the hull, the sampling shall be changed to once per hour	1 minute	NA
Sailing	<b>Change in position with hull status closed</b> Time from the last sample equals 1 minutes	1 second	+/-10 ft
Open Water Disposal	<b>Hull status open</b> A position must be recorded within 1 second of the hull status going from closed to open and again within 1 second of the hull status going from open to closed The position shall be reported at any equal interval from 6 to 12 seconds. This interval shall always remain consistent for the dredge plant.	1 second	+/-10 ft
Offloading	<b>Offloading material, hull status reported as open</b> A position must be recorded within 1 minute arrival at the offload location and within one second of the material starting to be removed from scow. Time from the last sample equals 1 minute. -----STANDBY OFFLOADING----- In the event a scow is not being actively offloaded at the offload location for a time equal to one hour, sampling interval shall be equal to once an hour.	1 second     1 minute	+/-10 ft

Example: Scow is stationary for 1 hour 15 minutes, and then the scow sails to the disposal area. You should have a "Loading/Stationary" event at time zero, time 1 hour, and time 1 hour 15 minutes. Then, for Sailing, within 1 second of an elapsed time of 1 minute from the 1 hour 15 minutes event, another event occurs.

### 3.2.3 Data Transmission to Web Service

A Simple Object Access Protocol (SOAP) web service shall be used to report sensor data to the DQM Database. Data shall be transmitted as it is collected in real time and pushed to the DQM web service. If the web service is not available or returns an Error message, the data shall be stored in a queue and transmitted upon re-establishment of the connection, starting with the oldest data in the queue and continuing until real-time transmission is restored. Delays in pushing real time data to the DQM database should not exceed four hours. Exceptions to these requirements may be granted by the DQM center on a case by case basis with consideration for contract specific requirements, site specific conditions, and extreme weather events.

Please contact [dqm-support@usace.army.mil](mailto:dqm-support@usace.army.mil) to obtain the web service URL and the appropriate Key credentials and communication protocol.

The data transmission method call takes two arguments: a string containing the plant identifier assigned by the DQM Center, and a second string containing the JSON-formatted sensor data. The method returns the string "OK" if data was received. If the data is not received, either the web service or the client application will throw an error.

#### 3.2.4 XML-Formatted Sensor Data String

Each scow event shall be passed as a string on one continuous line of data. The example below is broken up by variable for ease of reading:

```
<?xml version="1.0"?>
<SCOW_DREDGING_DATA version="2.5">
  <SCOW_NAME>AU1994</SCOW_NAME>
  <CONTRACT>W123BA-09-D-0087_RL01</CONTRACT>
  <TRIP_NUMBER>34</TRIP_NUMBER>
  <X_POSITION>-81.670632</X_POSITION>
  <Y_POSITION>41.528987</Y_POSITION>
  <DATE_TIME>2010-08-14 10:50:15</DATE_TIME>
  <SCOW_SPEED>0.0</SCOW_SPEED>
  <SCOW_COURSE>0.0</SCOW_COURSE>
  <HULL_STATUS>OPEN</HULL_STATUS>
  <SCOW_HEADING></SCOW_HEADING>
  <SCOW_FWD_DRAFT></SCOW_FWD_DRAFT>
  <SCOW_AFT_DRAFT></SCOW_AFT_DRAFT>
  <SCOW_AVG_DRAFT></SCOW_AVG_DRAFT>
  <ULLAGE_FWD></ULLAGE_FWD>
  <ULLAGE_AFT></ULLAGE_AFT>
  <ULLAGE_AVG></ULLAGE_AVG>
  <SCOW_BIN_VOLUME></SCOW_BIN_VOLUME>
  <SCOW_DISPLACEMENT></SCOW_DISPLACEMENT>
  <SCOW_LIGHTSHIP></SCOW_LIGHTSHIP>
  <SCOW_TDS></SCOW_TDS>
  <ADDITIONAL_DATA>Some more scow info, if needed</ADDITIONAL_DATA>
</SCOW_DREDGING_DATA>
```

It should be noted that date values shall be formatted as follows: YYYY-MM-DD HH:MM:SS, as shown above. If for any reason a field has no value, send the enclosing XML tags with nothing between them, e.g. <DRAFT\_AFT></DRAFT\_AFT>. The web service cannot handle a "null" value or any other indicators of no value collected.

#### 3.2.5 Contractor Data Backup

The Contractor shall maintain an archive of all data sent to the DQM database during the dredging contract. The COR may require, at no increase in the contract price, that the Contractor provide a copy of these data covering specified time periods. The data shall be provided in the HTML format which would have been transmitted to the DQM database. Data submission shall be via storage medium acceptable to the COR.

At the end of the dredging contact, the Contractor shall contact the National DQM Support Center prior to discarding the data to ensure it has been appropriately archived. The Contractor shall record in a separate section at the end of the scow's on-site copy of the DPIP the following

information:

- a. Person who made the call
- b. The date of the call
- c. The DQM representative who gave permission to discard

The same day of the phone call and prior to discarding the data, the Contractor shall submit a "Data Appropriately Archived Email" to the local districts Contracting Officer's Representative with the above information, and Cc: the DQM Support Center representative providing permission. In addition to the above information, also include in the e-mail:

- d. Project name and contract number
- e. Scow start and end dates
- f. Name of the scow

### 3.3 PERFORMANCE REQUIREMENTS

The Contractor's DQM system shall be fully operational at the start of dredging operations and fully certified prior to moving dredge material on the contract (see paragraph 1.4, National Dredging Quality Management Program Certification). To meet contract requirements for operability, in addition to certification, the Contractor's system shall provide a data string with values for all parameters while operating, as described within the specifications. Additionally, all hardware shall be compliant with DPIP requirements (paragraph 1.5). Quality data strings are considered to be those providing values for all parameters reported when operating according to the specification. Repairs necessary to restore data return compliance shall be made within 48 hours. Failure by the Contractor to report the required data within the specified time window for scow measurements (see paragraphs 3.2.2, "Data Measurement Frequency," and 3.2.3, "Data Reporting") and failure to receive DQM certification prior to dredging may result in withholding of up to 10% of the contract progress payment per clause 52.232-5.

### 3.4 COMPLIANCE QUALITY ASSURANCE CHECKS

Quality assurance checks are required prior to the commencement of dredging, and at the discretion of a COR periodically throughout the duration of the contract. As part of the testing requirements, the dredging contractor shall provide the above personnel an easily accessible visual display of measurements from the scow monitoring system in the same units that are submitted to the DQM database. These measurements shall be provided in real-time on the scow or near real-time on location. The dredging contractor shall also submit data collected during the QA checks from the scow monitoring system to the DQM database at completion of the checks. Detailed instructions for performing these checks and a spreadsheet for recording the results are available at <http://dqm.usace.army.mil/Certifications/Index.aspx>. Incoming data shall be periodically reviewed to assure compliance with performance requirements outlined in paragraphs 3.3.

For annual instrumentation checks and compliance monitoring, the DQM Data Acquisition Team personnel attempt to be as flexible as possible in performing their checks so as not to delay work; however, in order to expedite matters as much as possible, it is necessary that they receive the support and cooperation of the local district and dredging contractor. The dredging contractor shall coordinate pickup times and locations and provide transportation to and from any platform with a DQM certified system in a timely manner. Calibrations to the sensors should already be performed

before DQM personnel arrive on site.

#### 3.4.1 Position Check

During the QA checks, both the static position of the scow and a dynamic tracking of movement through each of the event triggers (paragraph 3.2.2) will be monitored by an independent GPS unit. The inspector GPS data shall be compared to the data that is collected by the DQM certified system for the same period. The data should be provided to the Data Acquisition Team by the system provider while onsite. The Data Acquisition Team will confirm position of the scow, verify that data collection intervals change as each of the scow event triggers change, and will check all data reporting requirements. A contractor furnished tug will be required to transport the scow during this check. Throughout the contract, the COR will periodically verify reported positions by independently measuring with other equipment to verify locations.

#### 3.4.2 Hull Status Check

The Contracting Officer's Representative will document the angle at which the hull status sensor registers "OPEN" and "CLOSED".

#### 3.4.3 Draft & Displacement Check

The COR shall periodically verify the accuracy of the fore and aft system reported draft values by comparing the vessel hull draft marks to the corresponding sensor readings indicated on the DQM screen. The vessel's hull draft reading shall be viewed from a contractor supplied auxiliary vessel circling the dredge. The COR shall review the difference between averaged drafts recorded by the instruments and those estimated from the draft marks to insure that the system is operating within the acceptable accuracy of approximately + 0.1 ft. in calm seas conditions. Reported draft values will be verified light, loaded, and at other intervals at the discretion of the COR. If sensors responsible for collecting draft values are not located on centerline, verification may be required under different trim and list conditions. If values are outside the acceptable range, the Contractor shall re-calibrate or repair system components as necessary. This check may be performed separately or as a part of the Water Load Test. For each system provided average draft value recorded during the draft check, corresponding displacement will be verified longhand using the supplied draft/displacement tables.

### 3.5 CONTRACTOR QUALITY CONTROL

Dredging contractor shall designate a quality control systems manager (QCSM), who shall develop and maintain daily procedures to ensure the contractor's quality control (CQC) of the DQM system. These methods shall include a procedure by which data being collected is checked against known values and telemetry is verified to be functioning. The Contractor Quality Control Plan which describes these methods and procedures shall be included in the DPIP as per paragraph 1.5. This is the only section which shall be submitted to the local district and is a required submittal prior to the start of the contract. CQC Reports may be required at the discretion of the QAR daily. Annotations shall be made in the CQC Report documenting all actions taken on each day of work including all deficiencies found and corrective actions taken.

3.6 LIST OF ITEMS PROVIDED BY THE CONTRACTOR

DPIP	Sec 1.5 Dredge Plant Instrumentation Plan
DQM SYSTEM	
Sensor Instrumentation	Sec. 3.1 Specifications for Reported Data
SCOW DATA	
Event documentation	Sec. 3.2.2 Data Reporting Frequency
Data reports	Sec. 3.2.3 Data Transmission to Web Service
QA EQUIPMENT ON DREDGE	
Clear and accurate draft marks	

-- End of Section --

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SECTION 35 20 23.23

NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM  
HOPPER DREDGE

10 May 2017

PART 1 GENERAL

1.1 DESCRIPTION

The work under this contract requires use of the National Dredging Quality Management Program (DQM) to monitor the dredge's status at all times during the contract and to manage data history.

This performance-based specification section identifies the minimum required output and the precision and instrumentation requirements. The requirements may be satisfied using equipment and technical procedures selected by the Contractor.

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office responsible for review of the submittal for the Government. The following shall be submitted in accordance with Section 01 33 00, "SUBMITTAL PROCEDURES":

SD-01 Preconstruction Submittals

Dredge Plant Instrumentation Plan Revisions or Addendum; G, OP

SD-06 Test Reports

Data Appropriately Archived Email; G, OP

SD-07 Certificates

Letter of National Dredging Quality Management Program  
Certification; G, OP

1.3 PAYMENT

No separate payment will be made for installation, operation, and maintenance of the DQM-certified system as specified herein for the duration of the dredging operations; all costs in connection therewith shall be considered a subsidiary obligation of the Contractor and covered under the contract unit prices for dredging in the bidding schedule.

1.4 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM CERTIFICATION

The Contractor is required to have a current certification from DQM for the hopper dredge instrumentation system to be used under this contract. Criteria for certification shall be based on the most recent specification posted on the DQM website

(<http://dqm.usace.army.mil/Specifications/Index.aspx>). Compliance with these criteria shall be verified by annual onsite quality assurance (QA) checks conducted by the DQM Support Center Data Acquisition and Analysis Team and by periodic review of the transmitted data. DQM Certification is valid for one year from the date of the annual QA checks. Certification is contingent upon the system's ability to continuously meet the performance requirements as outlined in paragraphs 3.3 and 3.5. If issues with data quality are not corrected within 48 hours, the system certification shall be revoked and additional QA checks by the Data Acquisition and Analysis Team may be necessary.

Annual DQM Certification shall be based on the following:

- A series of QA checks as described in paragraph 3.4, "Compliance Quality Assurance Checks"
- Verification of data acquisition and transfer (paragraph 3.3)
- Review of the Dredge Plant Instrumentation Plan (DPIP) as described in paragraph 1.5

The Contractor shall have personnel who are familiar with the system instrumentation and who have the ability to recalibrate the sensors on site during the QA process. The Dredging Contractor shall coordinate pickup times and locations and provide transportation to and from any platform with a DQM system to team personnel in a timely manner. As a general rule, Data Acquisition and Analysis Team personnel will come with PPE consisting of hardhats, steel toe boots, and life jackets. If additional safety equipment is needed - such as eye protection, safety harnesses, work gloves or personal location beacons - these items shall be provided to the team while on site. It is the Dredging Contractor's obligation to inform the QA team if the location designated for the QA checks has any site-specific safety concerns prior to their arrival on site.

The owner or operator of the hopper dredge shall contact DQM at [DQM-AnnualQA@rpsgroup.com](mailto:DQM-AnnualQA@rpsgroup.com) on an annual basis, or at least three weeks prior to the certification expiration, to schedule QA checks for renewal. This notification is meant to make the Data Acquisition and Analysis Team aware of a target date for the annual QA checks for the dredge. At least one week prior to the target date, the Contractor shall contact the Data Acquisition and Analysis Team and verbally coordinate a specific date and time. The Contractor shall then follow up this conversation with a written email confirmation. The owner/operator shall coordinate the QA checks with all local authorities, including but not limited to, the local USACE Contracting Officer.

Recertification is required for any yard work which produces modification to displacement (change in dredge line, or repositioning or repainting hull marks), modification to bin volume (change in bin dimensions, or addition or subtraction of structure), or changes in sensor type or location; these changes shall be reported in the sensor log section of the DPIP. A system does not have to be transmitting data between jobs; however, in order to retain its certification during this period, the system sensors or hardware should not be disconnected or removed from the dredge. If the system is powered down, calibration coefficients shall be retained.

#### 1.5 DREDGE PLANT INSTRUMENTATION PLAN (DPIP)

The Contractor shall have a digital copy of the DPIP on file with the DQM



Support Center. While working on site, the Contractor shall also maintain on the dredge a copy of the DPIP which is easily accessible to Government personnel at all times. This document shall describe the sensors used, configuration of the system, how sensor data will be collected, how quality control on the data will be performed, and how sensors/data reporting equipment will be calibrated and repaired if they fail. A description of computed dredge specific data and how the sensor data will be transmitted to the DQM database will also be included. The Contractor shall submit to the DQM Support Center any addendum or modifications made to the plan, subsequent to its original submission, prior to the start of work.

The DPIP shall include the following as a minimum:

*(The DPIP must have a Table of Contents in the following order and tabs separating sections.)*

Cover Page

- Dredge name
- Date
- Photo of plant

Table of Contents

New Page

- Dredge contacts

Dredging company

- Dredge point of contact on site
- Phone number
- Email address

Dredge monitoring system provider

- Dredge monitoring system point of contact
- Telephone number
- Email address

New Page

- Table of dredge characteristics

- Dimensions of the dredge
- Dimensions of the hopper
- Method of disposal
- Capacity
- Minimum and maximum digging depth
- Minimum and maximum drafts and displacements
- RPM and velocity range
- IDs of the suction and discharge pipes

New Page

- Sensor data collection method

- Any averaging
- Route from the sensor to the DQM computer
- Internet connection type and provider

- Sensor descriptions, locations, and calibration methods

Positioning system

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions

Dredge heading instrumentation

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation

Hull status

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

Draft

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

Ullage

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

Dragarm depths

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

Density

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions including pipe diameter
- Calibration procedure

Velocity

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions including pipe diameter
- Calibration procedure

Pump RPM

- Brand name, model, and accuracy

- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

Pumpout (if instrumented)

- Brand name, model, and accuracy
- Any calculation done external to the instrumentation
- Sensor location with referenced dimensions
- Calibration procedure

- Calculated parameters

Displacement

- Method used by the Contractor to calculate displacement
- Tables listing (fresh and salt water) displacement as a function of draft in feet and tenths of feet

Hopper volume

- Method used by the Contractor to calculate the hopper volume
- Table listing the hopper volume as a function of hopper ullage in feet and tenths of feet
- Description of the datum for ullage sounding measurements

Draghead Position

- Method used by Contractor to calculate the draghead position

Load number

- Method used to increment the load number

- Quality control

Description of the Contractor's quality control process  
Log of sensor calibrations, repairs, and modifications

- Appendices

Hydrostatic curves

Certified displacement and volume tables

Legible dimensioned drawings of the dredge with units in feet

- Typical plan of the dredge showing the following:
  - Overall dredge and hopper dimensions
  - Locations of the required sensors referenced to uniform longitudinal and transverse reference points
  - Distance between the draft sensors
  - Distance between the ullage sensors
  - Dimensions of the dragarm
- Profile view of the dredge showing the following:
  - Overall dredge and hopper dimensions
  - Distance between the draft sensors and the draftmarks

---Locations of the required sensors, referenced to uniform  
vertical and longitudinal reference points  
--Typical vessel cross section through the hopper

Sensor manuals and certificates of calibration

Any changes to the computation methods shall be approved by the DQM Support Center prior to their implementation.

## PART 2 PRODUCTS (Not Applicable)

## PART 3 EXECUTION

### 3.1 REQUIREMENTS FOR REPORTED DATA

The Contractor shall provide, operate, and maintain all hardware and software to meet these specifications. The Contractor shall be responsible for replacement, repair, and calibration of sensors and other necessary data acquisition equipment needed to supply the required data.

Repairs shall be completed within 48 hours of any sensor failure. Upon completion of a repair, replacement, installation, modification, or calibration, the Contractor shall notify the Contracting Officer's Representative (COR). The COR may request recalibration of sensors or other hardware components at any time during the contract as deemed necessary.

The Contractor shall keep a log of sensor repair, replacement, installation, modification, and calibration in the dredge's onboard copy of the DPIP. The log shall contain a three-year history of sensor maintenance, including the time of the sensor failures (and subsequent repairs), the time and results of sensor calibrations, the time of sensor replacements, and the time that backup sensor systems were initiated to provide required data. It shall also contain the name of the person responsible for the sensor work.

Sensors installed shall be capable of collecting parameters within specified accuracies and resolutions indicated in the following subparagraphs.

Reported sensor values for ullage, draft, and draghead depth should represent a weighted average with the highest and lowest values not included in the calculated average for the given interval. This information should be documented in the DPIP sections that say "Calculations done external to the instrumentation."

#### 3.1.1 Date and Time

The date and time shall be reported to the nearest second and referenced to UTC time based on a 24-hour format: mm/dd/yyyy hh:mm:ss. This reported time shall be such that it cannot be modified in any computer. One possible solution is to use the time reported by the GPS in the NMEA string.

#### 3.1.2 Load Number

A load number shall document the end of a disposal event. Load numbering will begin at number 1 at the start of the contract and will be incremented by 1 at the completion of each disposal event or emptying of the hopper. Whenever possible, the load number shall be calculated off of the sensors aboard the dredge and shall be a mathematically repeatable routine.

Efforts shall be made to include logic that avoids false load number increments while also not allowing the routine to miss any disposal event. If manual incrementing of the load number is in place, extra attention should be paid to this value in the Contractor's quality control process ( paragraph 3.5).

### 3.1.3 Horizontal Positioning

All locations shall be obtained using a positioning system operating with a minimum accuracy level of 1 to 3 meters horizontal Circular Error Probable (CEP). Positions shall be reported as Latitude/Longitude WGS 84 in decimal degrees. West Longitude and South Latitude values are reported as negative.

#### 3.1.3.1 Vessel Horizontal Positioning

Vessel horizontal positioning shall be recorded as geographic coordinates of the vessel as indicated by the location of the GPS antenna.

#### 3.1.3.2 Draghead Horizontal Positioning

Draghead horizontal positioning shall be recorded as geographic coordinates of the heel on the centerline of the draghead(s). Any offset calculations from the GPS antenna should be described in the DPIIP.

#### 3.1.4 Hull Status

Open/closed status of the hopper dredge, corresponding to the split/non-split condition of a split-hull hopper dredge, shall be monitored. For dredges with hopper doors, the status of a single door that is the first opened during normal disposal operations may be monitored. An "open" value shall indicate that the hopper door is open or, in the case of split-hull dredges, that the hull is split. A "closed" value indicates the hopper doors are closed or, in the case of split-hull dredges, that the hull is not split. [For this contract, hull status shall register closed prior to leaving the disposal area.]

#### 3.1.5 Dredge Course

Dredge course-over-ground (COG) shall be provided using industry-standard equipment. The Contractor shall provide dredge course-over-ground to the nearest whole degree with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

#### 3.1.6 Dredge Speed

Dredge speed-over-ground shall be provided in knots using industry-standard equipment with a minimum accuracy of 1 knot and resolution to the nearest 0.1 knot.

#### 3.1.7 Dredge Heading

Dredge heading shall be provided using industry-standard equipment. The dredge heading shall be accurate to within 5 degrees and reported to the nearest whole degree with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

#### 3.1.8 Tide

Tide data shall be obtained using appropriate equipment to give the water

level with an accuracy of  $\pm 0.1$  foot and a resolution of 0.01 foot. Tide values above project datum described in the dredging specification shall be entered with a positive sign and those below with a negative sign.

#### 3.1.9 Draft

All reported draft measurements shall be in feet, tenths, and hundredths with an accuracy of  $\pm 0.1$  foot relative to observed physical draft readings. The measurements shall be reported at a resolution of two decimal places (hundredths of a foot). The reported forward draft value shall be equal to the sum of the visual forward port and starboard draft mark readings divided by two. The reported aft draft value shall be equal to the sum of the visual aft port and starboard draft mark readings divided by two. Forward draft, aft draft, and average draft will be reported. Sensors shall be placed at an optimum location on the vessel to be reflective of observed physical draft mark readings at any trim or list. Minimum accuracies are conditional to relatively calm water. The sensor value reported shall be an average of at least ten samples per event, with at least one maximum value and one minimum value removed, and the minimum eight remaining values averaged. When the average draft is calculated for the purpose of determining displacement, significant digits for average draft shall be maintained such that if forward draft was 0.15 and aft draft was 0.1, then the average draft would be 0.125.

#### 3.1.10 Hopper Ullage Sounding

All reported ullage soundings shall be in feet, tenths, and hundredths with an accuracy of  $\pm 0.1$  foot with respect to the combing and be representative of the forward and aft extents of the hopper as close to the centerline as is possible. The measurements shall be reported at a resolution of two decimal places (hundredths of a foot). Forward ullage and aft ullage soundings will be reported. Sensors should be mounted so as to avoid discharge flume turbulence, foam, and any structure that could produce sidelobe errors. If sensors must be offset from the centerline of the hopper, they should be offset to opposite sides of the vessel. If more than one fore or one aft sensor are used, they shall be placed near the corners of the hopper, and the average value of the fore sensors and the average value of the aft sensors shall be reported. The sensor value reported shall be an average of at least ten samples per event, with at least one maximum value and one minimum value removed, and the minimum eight remaining values averaged. When average ullage is calculated for the purpose of determining hopper volume, significant digits for average ullage shall be maintained such that if forward ullage was 0.15 and aft ullage was 0.1, then the average ullage would be 0.125.

#### 3.1.11 Hopper Volume

Hopper volume shall be reported in cubic yards, based on the most accurate method available for the dredge. The minimum standard of accuracy for hopper volume is interpolation from the certified hopper volume table, based on the average fore and aft ullage soundings.

#### 3.1.12 Displacement

Dredge displacement shall be reported in long tons, based on the most accurate method available for the dredge. The minimum standard of accuracy for displacement is interpolation from the displacement table, based on the average draft. For this contract the density of water used to calculate displacement shall be 1027 - 1030 kg/cubic meter, and it shall be used for

an additional interpolation between the fresh and salt water tables. (The water density used is project-/location-specific: 1000 kg/m<sup>3</sup> (1 g/cm<sup>3</sup>) - fresh water 1027 kg/m<sup>3</sup> - 1030 kg/m<sup>3</sup> (1.027 g/cm<sup>3</sup> - 1.03 g/cm<sup>3</sup>) - salt water)

### 3.1.13 Empty Displacement

Empty displacement shall be reported in long tons and shall be the lightship value of the dredge, or the weight of the dredge with no material in the hopper, adjusted for fuel and water consumption.

### 3.1.14 Draghead Depths

Draghead depths shall be reported with an accuracy of +/- 0.5 foot and a resolution to the nearest 0.1 foot as measured from the surface of the water with no tidal adjustments. Minimum accuracies are conditional to relatively calm water. The sensor value reported shall be an average of at least ten samples per event, with at least one maximum value and one minimum value removed, and the minimum eight remaining values averaged.

### 3.1.15 Slurry Densities of Dragarms

A density metering device, calibrated according to the manufacturer's specifications, shall be used to record the slurry density of each dragarm to the nearest 0.0001 g/cc with an accuracy of +/- 0.001 g/cc. If the manufacturer does not specify a frequency of recalibration, calibration shall be conducted prior to commencement of work.

### 3.1.16 Slurry Velocities of Dragarms

A flow metering device, calibrated according to the manufacturer's specifications, shall be used to record the slurry velocity of each dragarm to the nearest 0.0001 fps with an accuracy of +/- 0.001 fps. If the manufacturer does not specify a frequency of recalibration, calibration shall be conducted prior to commencement of work. The slurry velocity shall be measured in the same pipeline inside diameter as that used for the slurry density measurement.

### 3.1.17 Pump RPM

Pump RPM shall be measured with the highest level of accuracy that is standard on the vessel operational displays, either at the bridge, at the drag tender's controls, or in the engine room. Dredges with multiple pumps per side shall report RPM for the pump that best describes the dredging process (typically the outboard pump). If requirements of paragraph 3.1.19 are determined based on the pump RPM, then that value shall be reported.

### 3.1.18 Sea Suction Valve for Dragarm

If sea suction can be taken to bypass suction through the draghead, the sea suction location and valve status will be reported. The status of the valve will change from "closed" to "open" when the valve starts to open and will register "closed" when the valve is fully closed. When applicable, the state of the latch will be reported as "true" or "false." The sea suction location shall be reported in a standard non-changing name string or no more than 20 characters. These field values will always occur in the XML string as a set. The DQM system can accommodate only up to four unique sea suction locations. Suggested options for the naming convention can be found in the example dataset in paragraph 3.2.8, "Data Format."

### 3.1.19 Pumpout

When the hopper dredge is being pumped out, a "true" value shall be reported; when it is not, a "false" value shall be reported. The only permissible values are "true" and "false."

## 3.2 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM SYSTEM REQUIREMENTS

The Contractor's DQM system shall be capable of collecting, displaying, and transmitting information to the DQM database. The applicable parameters from paragraph 3.1 shall be recorded as events locally and continually transmitted to the DQM database anytime an Internet connection is available. The Dredge shall be equipped with a DQM computer system, consisting of a computer, monitor, keyboard, mouse, data modem, UPS, and network hub. The computer system shall be a standalone system, exclusive to the DQM monitoring system, and will have USACE DQM software installed on it. If a hardware problem occurs, or if a part of the system is physically damaged, then the Contractor shall be responsible for repairing it within 48 hours of determination of the condition.

### 3.2.1 Computer Requirements

The Contractor shall provide a dedicated onboard computer for use by the DQM system. This computer shall run USACE software and receive data from the Contractor's data-reporting interface. This computer must meet or exceed the following performance specifications:

CPU:	Intel or AMD processor with a (non-overclocked) clock speed of at least 3 gigahertz (GHz)
Hard drive:	250 gigabytes (GB); internal
RAM:	2 gigabytes (GB)
Ethernet adapter:	10 or 100 megabit (Mbit) internal network card with an RJ-45 connector
Video adapter:	Must support resolution of 1024x768 at 16-bit color depth
Keyboard:	Standard 101-key
Mouse:	Standard 2-button mouse
Monitor:	17-inch viewable display; must support 1024x768 resolution at 16-bit color depth
CD-ROM drive:	16X read speed/8X write speed
Ports:	2 free serial ports with standard 9-pin connectors; 1 free USB port
Other hardware:	Category 5 (Cat-5) cable with standard RJ-45 plugs connecting the network adapter to the network hub; 1 spare cable

The Contractor shall install a fully licensed copy of Windows 7 Professional Operating System on the computer specified above. The Contractor shall also install any necessary manufacturer-provided drivers for the installed hardware.

This computer shall be located and oriented to allow data entry and data viewing, as well as to provide access to data ports for the connection of external hardware. Location and orientation shall be subject to the COR's approval.

### 3.2.2 Software

The DQM computer's primary function is to transmit data to the DQM



shoreside database. No other software which conflicts with this function shall be installed on this computer. The DQM computer will have the USACE-provided Dredge Quality Management Onboard Software (DQMOBS) installed on it by DQM personnel along with USACE-selected software for remote support and management.

### 3.2.3 Network Hub

The DQM computer shall communicate via IEEE 802.3 Ethernet and the TCP/IP networking protocol. The Contractor shall provide a network hub to allow the temporary addition of the COR's portable computer to the computer network. The hub shall provide a minimum of four RJ-45 ports that support Category 5 (Cat-5) cable with standard RJ-45 plugs connecting the network adapter to the network hub; one spare cable shall be available on site to plug into the network hub.

### 3.2.4 UPS

The Contractor shall supply an Uninterruptible Power Supply (UPS) for the computer and networking equipment. The UPS shall provide backup power at 1kVA for a minimum of ten minutes. The UPS shall interface with the DQM computer to communicate UPS status. The Contractor shall ensure that sufficient power outlets are available to run all specified equipment.

### 3.2.5 Internet Access

The Contractor shall maintain an Internet connection capable of transmitting real-time data to the DQM server and supporting remote access, as well as enough additional bandwidth to clear historically queued data when a connection is re-obtained. The telemetry system shall always be available and have connectivity in the contract area. If connectivity is lost, unsent data shall be queued and transmitted upon restoration of connectivity. The Contractor shall acquire and install all necessary hardware and software to make the Internet connection available for data transmission to the DQM web service. The hardware and software must be configured to allow the DQM Support Center remote access to this computer. Coordination between the dredging company's IT and the DQM Support Center may be required in order to configure remote access through any security, firewall, router, and telemetry systems. Telemetry systems must be capable of meeting these minimum reporting requirements in all operating conditions.

### 3.2.6 Data Routing Requirements

Onboard sensors shall continually monitor dredge conditions, operations and efficiency and route this information into the shipboard dredge-specific system (DSS) computer to assist in guiding dredge operations. Portions of this Contractor-collected information shall be routed to the DQM computer on a real-time basis. Standard sensor data shall be sent to the DQM computer via an RS 232 9600- or 19200-baud serial interface. The serial interface shall be configured as 8 bits, no parity, and no flow control.

### 3.2.7 Data Reporting Frequency

Data shall be logged as a series of events. Each event will consist of a dataset containing dredge information as per paragraph 3.1. Each set of measurements (time, position, etc.) will be considered an event. Any required information in paragraph 3.1 that is not an averaged variable (i.e., draft and ullage) shall be collected within 1 second of the reported time. A data string for an event shall be sent to the DQM computer every 6 to 12

seconds, and this interval shall remain constant throughout the contract; data strings shall never be transmitted more frequently than once per every 5 seconds. Any averaged variable must be collected and computed within this sampling interval.

### 3.2.8 Data Format

Data shall be reported as an extensible Markup Language (W3C standard XML 1.0) document as indicated below. Line breaks and spaces are added for readability, but the carriage return, line feed character combination is added only to delineate records (HOPPER\_DREDGING\_DATA tag) for actual data transmission.

```
{?xml version="1.0"?}
{HOPPER_DREDGING_DATA version = "2.0"}
  {DREDGE_NAME} string32 {/DREDGE_NAME}
    {HOPPER_DATA_RECORD}
      {DATE_TIME} time date string {/DATE_TIME}
      {LOAD_NUMBER} integer string {/LOAD_NUMBER}
      {VESSEL_X coord_type="LL"} floating point string {/VESSEL_X}
      {VESSEL_Y coord_type="LL"} floating point string {/VESSEL_Y}
      {PORT_DRAG_X coord_type="LL"} floating point string
{/PORT_DRAG_X}
      {PORT_DRAG_Y coord_type="LL"} floating point string
{/PORT_DRAG_Y}
      {STBD_DRAG_X coord_type="LL"} floating point string
{/STBD_DRAG_X}
      {STBD_DRAG_Y coord_type="LL"} floating point string
{/STBD_DRAG_Y}
      {HULL_STATUS} OPEN/CLOSED string {/HULL_STATUS}
      {VESSEL_COURSE} floating point string {/VESSEL_COURSE}
      {VESSEL_SPEED} floating point string {/VESSEL_SPEED}
      {VESSEL_HEADING} floating point string {/VESSEL_HEADING}
      {TIDE} floating point string {/TIDE}
      {DRAFT_FORE} floating point string {/DRAFT_FORE}
      {DRAFT_AFT} floating point string {/DRAFT_AFT}
      {ULLAGE_FORE} floating point string {/ULLAGE_FORE}
      {ULLAGE_AFT} floating point string {/ULLAGE_AFT}
      {HOPPER_VOLUME} floating point string {/HOPPER_VOLUME}
      {DISPLACEMENT} floating point string {/DISPLACEMENT}
      {EMPTY_DISPLACEMENT} floating point string
{/EMPTY_DISPLACEMENT}
      {DRAGHEAD_DEPTH_PORT} floating point string
{/DRAGHEAD_DEPTH_PORT}
      {DRAGHEAD_DEPTH_STBD} floating point string
{/DRAGHEAD_DEPTH_STBD}
      {PORT_DENSITY} floating point string {/PORT_DENSITY}
      {STBD_DENSITY} floating point string {/STBD_DENSITY}
      {PORT_VELOCITY} floating point string {/PORT_VELOCITY}
      {STBD_VELOCITY} floating point string {/STBD_VELOCITY}
      {PUMP_RPM_PORT} floating point string {/PUMP_RPM_PORT}
      {PUMP_RPM_STBD} floating point string {/PUMP_RPM_STBD}
      {VALVE_1_LOCATION} string 32 {/VALVE_1_LOCATION}
      {VALVE_1_STATUS} open/closed {/VALVE_1_STATUS}
      {VALVE_1_LATCHED} true/false {/VALVE_1_LATCHED}
      {VALVE_2_LOCATION} string32 {/VALVE_2_LOCATION}
      {VALVE_2_STATUS} open/closed {/VALVE_2_STATUS}
      {VALVE_2_LATCHED} true/false {/VALVE_2_LATCHED}
      {VALVE_3_LOCATION} string32 {/VALVE_3_LOCATION}
```

```

        {VALVE_3_STATUS} open/closed {/VALVE_3_STATUS}
        {VALVE_3_LATCHED} true/false {/VALVE_3_LATCHED}
        {VALVE_4_LOCATION} string32 {/VALVE_4_LOCATION}
        {VALVE_4_STATUS} open/closed {/VALVE_4_STATUS}
        {VALVE_4_LATCHED} true/false {/VALVE_4_LATCHED}
        {PUMP_OUT_ON} true/false/unknown string {/PUMP_OUT_ON}
        {/HOPPER_DATA_RECORD}

    {/HOPPER_DREDGING_DATA}
    Carriage Return - ASCII value 13
    Line Feed - ASCII value 10

```

#### Example

```

{?xml version="1.0"?}
{HOPPER_DREDGING_DATA version = "2.0"}
  {DREDGE_NAME}Essayons{/DREDGE_NAME}
  {HOPPER_DATA_RECORD}
    {DATE_TIME}04/11/2002 13:12:05{/DATE_TIME}
    {LOAD_NUMBER}102{/LOAD_NUMBER}
    {VESSEL_X coord_type="LL"}-80.123333{/VESSEL_X}
    {VESSEL_Y coord_type="LL"}10.123345{/VESSEL_Y}
    {PORT_DRAG_X coord_type="LL"}-80.1233371{/PORT_DRAG_X}
    {PORT_DRAG_Y coord_type="LL"}10.12335{/PORT_DRAG_Y}
    {STBD_DRAG_X coord_type="LL"}-80.123339{/STBD_DRAG_X}
    {STBD_DRAG_Y coord_type="LL"}10.123347{/STBD_DRAG_Y}
    {HULL_STATUS}CLOSED{/HULL_STATUS}
    {VESSEL_COURSE}258{/VESSEL_COURSE}
    {VESSEL_SPEED}3.4{/VESSEL_SPEED}
    {VESSEL_HEADING}302{/VESSEL_HEADING}
    {TIDE}-0.1{/TIDE}
    {DRAFT_FORE}10.05{/DRAFT_FORE}
    {DRAFT_AFT}15.13{/DRAFT_AFT}
    {ULLAGE_FORE}10.11{/ULLAGE_FORE}
    {ULLAGE_AFT}10.22{/ULLAGE_AFT}
    {HOPPER_VOLUME}2555.2{/HOPPER_VOLUME}
    {DISPLACEMENT}4444.1{/DISPLACEMENT}
    {EMPTY_DISPLACEMENT}2345.0{/EMPTY_DISPLACEMENT}
    {DRAGHEAD_DEPTH_PORT}55.10{/DRAGHEAD_DEPTH_PORT}
    {DRAGHEAD_DEPTH_STBD}53.21{/DRAGHEAD_DEPTH_STBD}
    {PORT_DENSITY}1.02{/PORT_DENSITY}
    {STBD_DENSITY}1.03{/STBD_DENSITY}
    {PORT_VELOCITY}22.1{/PORT_VELOCITY}
    {VALVE_4_LATCHED} false{/VALVE_4_LATCHED}
    {PUMP_OUT_ON}false{/PUMP_OUT_ON}
  {/HOPPER_DATA_RECORD}
{/HOPPER_DREDGING_DATA}
{cr}
{lf}
{DREDGE_NAME}Essayons{/DREDGE_NAME}
  {HOPPER_DATA_RECORD}
    {DATE_TIME}04/11/2002 13:12:10{/DATE_TIME}
    {LOAD_NUMBER}102{/LOAD_NUMBER}
    {VESSEL_X coord_type="LL"}-80.123334{/VESSEL_X}
    {VESSEL_Y coord_type="LL"}10.123346{/VESSEL_Y}
    {PORT_DRAG_X coord_type="LL"}-80.1233372{/PORT_DRAG_X}
    {PORT_DRAG_Y coord_type="LL"}10.12336{/PORT_DRAG_Y}
    {STBD_DRAG_X coord_type="LL"}-80.123340{/STBD_DRAG_X}
    {STBD_DRAG_Y coord_type="LL"}10.123348{/STBD_DRAG_Y}
  {/HOPPER_DATA_RECORD}

```

```

        {HULL_STATUS}CLOSED{/HULL_STATUS}
        {VESSEL_COURSE}259{/VESSEL_COURSE}
        {VESSEL_SPEED}3.5{/VESSEL_SPEED}
        {VESSEL_HEADING}300{/VESSEL_HEADING}
        {TIDE}-0.1{/TIDE}
        {DRAFT_FORE}10.00{/DRAFT_FORE}
        {DRAFT_AFT}15.15{/DRAFT_AFT}
        {ULLAGE_FORE}10.15{/ULLAGE_FORE}
        {ULLAGE_AFT}10.20{/ULLAGE_AFT}
        {HOPPER_VOLUME}2555.5{/HOPPER_VOLUME}
        {DISPLACEMENT}4444.0{/DISPLACEMENT}
        {EMPTY_DISPLACEMENT}2345.0{/EMPTY_DISPLACEMENT}
        {DRAGHEAD_DEPTH_PORT}55.15{/DRAGHEAD_DEPTH_PORT}
        {DRAGHEAD_DEPTH_STBD}53.19{/DRAGHEAD_DEPTH_STBD}
        {PORT_DENSITY}1.00{/PORT_DENSITY}
        {STBD_DENSITY}1.01{/STBD_DENSITY}
        {PORT_VELOCITY}22.5{/PORT_VELOCITY}
        {VALVE_3_LATCHED}false{/VALVE_3_LATCHED}
        {VALVE_4_LOCATION}Starboard Sea Chest{/VALVE_4_LOCATION}
        {VALVE_4_STATUS}open{/VALVE_4_STATUS}
        {VALVE_4_LATCHED} false{/VALVE_4_LATCHED}
        {PUMP_OUT_ON}false{/PUMP_OUT_ON}
        {/HOPPER_DATA_RECORD}
    {/HOPPER_DREDGING_DATA}
    {cr}
    {lf}

```

### 3.2.9 Data Reporting

The system shall transmit correctly formatted event data XML strings to the DQM database continuously from mobilization until the last USACE post-dredging survey has been accepted. If the Internet connection ( paragraph 3.2.6) is non-operable, manual backups from the dredge computer of the XML data string which would have been transmitted to the DQM computer over the serial connection shall be performed for each day the device is inoperable and submitted to the DQM Support Center within 48 hours. This submission does not replace the requirement of correcting the issue affecting the automatic transmission of data. In the event of data transfer, transmission, or hardware failure, a manually recorded disposal log shall be maintained. It shall consist of a series of events. These events are start of dredging, end of dredging, pre-disposal and post-disposal. Each event shall include time stamp (GMT), position (Latitude and Longitude WGS84), draft, ullage, volume, and displacement. Disposal logs shall be submitted on a daily basis to the COR during the time when the system is not operational.

### 3.2.10 Contractor Data Backups

The Contractor shall maintain an archive of all data sent to the DQM computer during the dredging contract. The COR may require, at no increase in the contract price, that the Contractor provide a copy of these data covering specified time periods. The data shall be provided in the XML format which would have been transmitted to the DQM computer. There shall be no line breaks between the parameters; each record string shall be on separate line. The naming convention for the files shall be {dredgename}\_{StartYYYYMMddhhmmss}\_{EndYYYYMMddhhmmss}.txt . Data submission shall be via storage medium acceptable to the COR.

At the end of the dredging contract, the Contractor shall contact the DQM

Support Center prior to discarding the data to ensure that it has been appropriately archived. The Contractor shall record in a separate section at the end of the dredge's onboard copy of the DPIP the following information:

- Person who made the call
- Date of the call
- DQM representative who gave permission to discard

The same day of the phone call and prior to discarding the data, the Contractor shall submit a "Data Appropriately Archived Email" to the local District's COR with the above information, and cc: the DQM Support Center representative providing discard permission. In addition to the above information, the following shall also be included in the email:

- Project name and contract number
- Dredge start and end dates
- Name of the hopper dredge

### 3.3 PERFORMANCE REQUIREMENTS

The Contractor's DQM system shall be fully operational at the start of dredging operations and fully certified prior to moving dredge material on the contract (see paragraph 1.4, National Dredging Quality Management Program Certification). To meet contract requirements for operability, in addition to certification, the Contractor's system shall provide a data string with values for all parameters while operating, as described in the specifications. Additionally, all hardware shall be compliant with hardware requirements (paragraph 3.2). Quality data strings are considered to be those providing accurate values for all parameters reported when operating according to the specification. Repairs necessary to restore data return compliance shall be made within 48 hours. Failure by the Contractor to report the required data within the specified time window for dredge measurements (see paragraphs 3.2.7, "Data Reporting Frequency," and 3.2.9, "Data Reporting") may result in withholding of up to 10% of the contract progress payment per clause 52.232-5.

### 3.4 COMPLIANCE QUALITY ASSURANCE CHECKS

Quality assurance checks are required prior to the commencement of dredging, and at the discretion of a COR periodically throughout the duration of the contract. Detailed instructions for performing these checks and a spreadsheet for recording the results are available at <http://dqm.usace.army.mil/Certifications/Index.aspx>. Incoming data shall be periodically reviewed to ensure compliance with performance requirements outlined in paragraph 3.3. Data received must meet the reporting requirements outlined in the subparagraphs under paragraph 3.1; a more detailed description of some of the quality assurance methods is outlined below.

For annual instrumentation checks and compliance monitoring, the DQM Data Acquisition and Analysis Team personnel attempt to be as flexible as possible in performing their checks so as not to delay work; however, in order to expedite matters as much as possible, it is necessary that they receive the support and cooperation of the local District and dredging contractor. The Dredging Contractor shall coordinate pickup times and locations and provide transportation to and from any platform with a DQM certified system in a timely manner. Calibrations to the sensors should already have been performed before DQM personnel arrive on site.

#### 3.4.1 Draft and Displacement Check

The COR shall periodically verify the accuracy of the fore and aft system reported draft values by comparing the vessel hull draft marks to the corresponding sensor readings indicated on the DQM screen. The vessel's hull draft reading shall be viewed from a Contractor-supplied auxiliary vessel circling the dredge. The COR shall review the difference between averaged drafts recorded by the instruments and those estimated from the draft marks to ensure that the system is operating within the acceptable accuracy of approximately +/- 0.1 foot in calm seas conditions. Reported draft values will be verified light, loaded, and at other intervals at the inspector's discretion. If sensors responsible for collecting draft values are not located on centerline, verification may be required under different trim and list conditions. If values are outside the acceptable range, the Contractor shall recalibrate or repair system components as necessary. This check may be performed separately or as a part of the Water Load Test. For each system provided fore and aft draft, an average draft value will be calculated during the draft check, and the corresponding displacement will be verified longhand using the supplied draft/displacement tables.

#### 3.4.2 Draghead Depth Check

The COR may require periodic calibration checks of the reported draghead depth using manual means, such as tape measures or sounding lines, to directly measure draghead depth. The Contractor shall furnish a steel tape, chain, or wire with clearly visible flags/tags placed at 1-foot increments within the operational range of the dragarm. These devices shall be capable of measuring the depth below the water surface to the lowest fixed point of each draghead (often the heel) with sufficient length to measure 5 feet more than the maximum project depth. Pressure sensors may be used to verify calibration of the draghead sensors only in areas where current flow past the vessel/dragarm cannot be reduced sufficiently to allow safe handling of manual measuring devices. Pressure sensors, used for this purpose shall be vented pressure gages and shall be subjected to an annual manufacturer's calibration. Prior to the dragarm depth check, the sensor shall be checked at a known depth, and may be required to be zeroed at this point according to manufacturer's specifications. Care shall be taken not to kink the cable or restrict the vent during deployment.

The COR shall review the draghead depth data to ensure that the system is operating within acceptable accuracy and may direct the Contractor to recalibrate or repair system components as necessary. If a bubbler type system is used, weekly calibration of the draghead sensors is recommended, as they are sensitive to environmental conditions.

#### 3.4.3 Ullage Sounding and Volume Check

The COR shall periodically check the reported hopper ullage sounding using a tape measure or other distance measuring device. The Contractor shall furnish a clearly readable weighted tape, marked in tenths of a foot, capable of measuring throughout the full range of hopper depth. The weight for this tape shall be a 6-inch diameter disk weighing between 2 and 3 pounds. The COR shall review the hopper dredge ullage sounding data to ensure that the system is operating within acceptable accuracy (0.1 foot). Reported ullage soundings will be verified light, loaded, and at other intervals at the COR's discretion. Measurements can be taken from multiple locations along the combing or from sensor location at the COR's discretion. If values are outside the acceptable range, the Contractor

shall recalibrate or repair system components as necessary. This check may be performed separately or as a part of the Water Load Test. For each sensor-provided fore and aft ullage sounding value, an average ullage sounding value will be calculated during the ullage sounding check, and the corresponding volume will be verified longhand using the supplied hopper volume tables.

#### 3.4.4 Position Check

During the QA checks the reported position of the dredge will be verified by comparison with readings from a handheld GPS receiver. Throughout the contract, the COR will periodically take readings from an independent GPS to verify locations.

#### 3.4.5 Water Load Test

Water Load Tests shall consist of pumping the hopper dredge out to its lowest level and then filling it to capacity with water, taking ullage and draft measurements at both levels to determine hopper dredge volume and displacement. The objective of the Water Load Test is to validate the dredge's reported displacement and hopper volumes. If the results of the Water Load Test indicate that the system is not operating within acceptable accuracy, the Contractor shall correct the deficiencies causing the error, and repeat the Water Load Test until the results are acceptable.

The Contractor shall provide a handheld refractometer with automatic temperature compensation to measure the hopper dredge water-specific gravity during water tests. The refractometer shall be capable of measuring the hopper dredge water-specific gravity in grams/cubic centimeter with a resolution of 0.001 and minimum accuracy of +/- 0.001. The Contractor shall also provide a water-sampling device to retrieve a sufficient volume of water from various depths in the hopper dredge to accurately determine specific gravity with the refractometer and a sufficient volume of deionized water for calibration of the device.

#### 3.5 CONTRACTOR QUALITY CONTROL

The Dredging Contractor shall designate a Quality Control Systems Manager (QCSM), who shall develop and maintain daily procedures to ensure the Contractor's quality control (CQC) of the DQM system. These methods shall include a procedure by which data being collected is checked against known values, telemetry is verified to be functioning, and the DQM computer is verified to be on and the DQMOBS is running. The Contractor Quality Control Plan, which describes these methods and procedures shall be included in the DPIP as per paragraph 1.5 Table of Contents. This is the only section, which shall be submitted to the local District and is a required submittal prior to the start of the contract. CQC Reports may be required at the discretion of the Quality Assurance Representative (QAR) daily. Annotations shall be made in the CQC Report documenting all actions taken on each day of work, including all deficiencies found and corrective actions taken.

#### 3.6 LIST OF ITEMS TO BE PROVIDED BY THE CONTRACTOR

DPIP	Paragraph 1.5, "Dredge Plant Instrumentation Plan"
DQM System	
Sensor instrumentation	Paragraph 3.1, "Requirements for Reported Data"
DQM computer	Paragraph 3.2, "National Dredging Quality"

Management System Requirements"

Dredge Data

Event documentation	Paragraph 3.2.9, "Data Reporting"
Dredge data backups	Paragraph 3.2.10, "Contractor Data Backups"

QA Equipment on the Dredge

Ullage tape	Paragraph 3.4.3, "Ullage Sounding and Volume Check"
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Dragarm depth chain	Paragraph 3.4.2, "Draghead Depth Check"
Refractometer	Paragraph 3.4.5, "Water Load Test"
Water sampling device	Paragraph 3.4.5, "Water Load Test"

-- End of Section --



SECTION 35 20 25

BEACH AND DUNE FILL  
04/14

PART 1 GENERAL

1.1 SUMMARY

The project work covered by this section consists of furnishing all plant, labor, equipment, supplies, and material, and of performing all operations in connection with excavating, transporting, and placing satisfactory fill along the project shoreline as indicated on the contract drawings, as described by applicable permits, and/or as specified herein. Related sections are 01 00 00 ADDITIONAL SPECIAL CONTRACT REQUIREMENTS, and 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS.

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1	Safety and Health Requirements Manual
EM 1110-2-1810	Engineering and Design Coastal Geology

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Unless otherwise indicated below, Preconstruction Submittals shall be submitted no later than 20 calendar days after Notice of Award or 5 calendar days after Notice to Proceed, whichever is later.

General Work Plan; G, OP

The Contractor shall submit a Work Plan for review and approval by the Contracting Officer. The work plan shall include but not be limited to the following:

a. **Progress Map:** Provide a progress schedule map of the contractor's design. The progress schedule map shall be a plan view drawing depicting the fill site and access areas to be used on the project. The map shall show all acceptance sections (AS), access/staging areas, and pipeline landings anticipated to be used on the project. For each AS, the information shall list the following: Anticipated quantity of material per acceptance section, projected dates for satisfactory fill to be placed and

completed. The map shall provide dates when areas are to be used and ready for public use. The map will be color coordinated with the following color scheme: Red depicting an area not ready for construction; Orange depicting an area currently being worked, and Green meaning an area accepted by the Contracting Officer and ready for public use. The map shall be updated at least weekly and whenever significant changes occur to the projected dates. Since the map will be used by the Government for coordination with the public and to track progress, the update shall be provided prior to the weekly project progress meeting.

b. **Buoy Log:** The Contractor shall develop a method of inventory for all anchors, buoys, and buoy cables used in the construction of the project. This record shall be used by the Contractor to recover all buoys and anchoring equipment at the completion of the project.

c. **Grade Stake Log:**

GRADE STAKES ARE PROHIBITED FROM USE BETWEEN STATION 00+00 AND STATION 59+00 (PHASE III TEMPLATE) AND THE NATIVE BEACH AREA ADJACENT TO THOSE STATIONS.

The Contractor shall provide a sample Grade Stake Log used on the project and indicate how the log is prepared and maintained to inventory the grade stakes used on the project. The log shall include information concerning the location, installation, and recovery of all grade stakes. The Contractor shall make this log available for review by the appropriate Government personnel upon request.

d. **Staging and Access Area:**

STAGING OF EQUIPMENT IS PROHIBITED BETWEEN STATION 0+00 AND 59+00 (PHASE III TEMPLATE) AND THE NATIVE BEACH AREA ADJACENT TO THOSE STATIONS.

The Contractor shall indicate how they plan on accessing each site for their construction operations. The Contractor shall submit proposed drawings depicting the areas, photo-documentation of the condition of the access location prior to disrupting the site, dimensions of access channels, location of placement for excavated access channel material, and any support facilities for Contracting Officer approval.

e. **Public Protection:** Provide a Contractor's plan for ensuring public and worker safety. Submit means and methods for public protection during fill operations for review and approval by the Contracting Officer. Submit product information and methods of installation for orange safety fencing for safety measures. Submit methods of staking in place and maintenance of system for duration of construction. Submit off-road trucking operation safety plan.

**CULTURAL RESOURCE SENSITIVITY BRIEFING SCRIPT AND FORM; G, OP, PD**

The Contractor shall be required to give a cultural resource sensitivity briefing to each employee and visitor to the site. The sensitivity briefing shall be given each time that the safety

briefing is given. Each employee and visitor shall acknowledge that they have received the sensitivity briefing on the project "sign-in" sheet. This acknowledgement may be simply incorporated into the Contractor's standard sign-in sheet as a "Sensitivity Briefing" check box next to their signature. The sensitivity briefing text shall be placed in any location where safety information is displayed so that employees and visitors may reference it as appropriate. If an employee or visitor refuses to receive/acknowledge the sensitivity briefing, or does not adhere to the level of professionalism expected under the terms of these Contract Specifications, the QAR may restrict their access to the archaeological monitoring area.

A script of the sensitivity briefing that the Contractor intends to deliver throughout the period of performance shall be submitted to the Contracting Officer at least 7 days prior to the pre-construction conference along with the acknowledgement form or sign-in sheet that employees/visitors will sign to acknowledge that they have received the briefing.

#### Relocation of Navigation Aids; G, OP

Within 7 calendar days following receipt of Notice of Award, the Contractor shall notify the Commander, Eighth Coast Guard District, New Orleans, Louisiana of their plan to dredge adjacent to any aids which require relocation to facilitate dredging for each project fill segment. This notification shall be immediately followed by a formal written request with a copy to the Contracting Officer. The Contractor shall also contact the U.S. Coast Guard for information concerning the position to which the aids will be relocated.

#### Construction and Grade Stakes Recovery Plan; G, OP

GRADE STAKES ARE PROHIBITED FROM USE BETWEEN STATION 00+00 AND STATION 59+00 (PHASE III TEMPLATE) AND THE NATIVE BEACH AREA ADJACENT TO THOSE STATIONS.

If the Contractor intends to use grade stakes in the project work area, they shall submit a Construction and Grade Stakes Recovery Plan. The plan will outline the steps that the Contractor will implement to recover all the stakes used on the project. This plan will include the use of the Grade Stake Log submitted with the General Work Plan above.

#### Unacceptable Material Contingency Plan; G, OP

Submit an Unacceptable Material Contingency Plan as indicated in paragraph QUALITY CONTROL FOR SATISFACTORY FILL below.

#### Obstruction Identification and Removal Plan; G, OP

The contractor shall submit for approval an Obstruction Identification and Removal Plan to the Contracting Officer Representative prior to the start of dredging.

SD-02 Shop Drawings

Unless otherwise indicated below, Shop Drawings shall be submitted no later than 20 calendar days after Notice of Award or 5 calendar days after Notice to Proceed, whichever is later.

Electronic Tracking System Charts; G, OP

The Contractor shall furnish required plotted charts to the Contracting Officer.

Dredge Location Control Color-Coded Plot; G, OP

The Contractor shall furnish the required color-coded plots to the Contracting Officer.

#### SD-03 Product Data

Equipment and Performance Data; G, OP

The Contractor shall furnish proof of electronic positioning equipment calibration.

Declaration of Inspection; G, OP

Refer to paragraph FUEL OIL TRANSFER OPERATIONS below for submittal.

#### SD-04 Samples

Quality Control for Satisfactory Fill

Sediment samples of the fill shall be collected and stored at the on-site trailer for inspection. Refer to paragraph 3.7, QUALITY CONTROL FOR BEACH AND DUNE FILL, for further details on sampling.

#### SD-06 Test Reports

Dredge Progress Report; G, OP

The Contractor shall submit a bi-weekly Dredge Progress Report in Adobe PDF format to the Contracting Officer. The Dredge progress reports shall include but not be limited to the following:

- a. Summary table of excavated sediments, dredge positions and cut depths for the reporting time period obtained from applicable production reports 4267 or 27
- b. Overview of the project showing the cumulative dredge positions for the reporting time period
- c. Excavation graphs showing depth versus time for each dredge for the reporting time period
- d. A color-coded plot, in the project reference datum, of the draghead, cutterhead, or other hydraulic or mechanical dredging device depicting the vertical and horizontal limits of the material dredged each day. Any horizontal or vertical dredge violations shall be clearly defined
- e. Hopper dredges shall submit dredge track lines with draghead

depths that shall indicate dredge status: dredging, transiting, unloading, and loading

f. Daily reports for the reporting time period

g. Update of the construction progress, including estimated volumetric production rates from OCS Borrow Areas (both cumulative and for the reporting period)

h. Hopper Dredge Turtle Observer Reports (if applicable) for the reporting time period

i. Incidental Take Observer Reports (if applicable) for the reporting time period

Laboratory Test Results; G, OP

The Contractor shall submit weekly Laboratory Test Result Reports in Adobe PDF and Excel spreadsheet formats to the Contracting Officer. Additional information about the data requirements of this submittal are included in paragraph 3.7.1, Criteria for Satisfactory fill Material and 3.7.2, Fill Observation and Sampling, of this specification. The laboratory test results report(s) shall include, but not be limited to, the following:

- a. Grain size distribution curve (.pdf format)
- b. Sieve data used to generate the grain size distribution curve (Excel spreadsheet)
- c. Dry Munsell color (Excel spreadsheet)
- d. Carbonate content (Excel spreadsheet)
- e. Percent visual shell (Excel spreadsheet)
- f. Percent fines content (percent passing the #200 sieve)(Excel spreadsheet)
- g. Horizontal coordinates and elevation of sample locations (X,Y,Z)(Excel spreadsheet)
- h. Proof of current USACE validation for laboratory (.pdf format)

#### SD-07 Certificates

Notice of Intent to Dredge; G, OP, PD

Prior to commencement of work on this contract, the Contractor will be required to notify the Commander, Eighth Coast Guard District of their intent to dredge and request that it be published in the Local Notice to Mariners. This notification must be given in sufficient time so that it appears in the Notice to Mariners at least 30 calendar days prior to project commencement. A copy of the notification shall be provided to the Contracting Officer.

At least ten (10) calendar days before the Contractor mobilizes to

the project site to begin work preparations, the project archaeologist, Mr. Patrick O'Day, shall be contacted according to the conditions described in APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS of these Contract Documents.

The Contractor shall not be permitted to stage equipment, or make any site preparations east of Station 59+00, if the terms of APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS are not satisfied.

Failure to comply with ANY of the APPENDIX E terms shall immediately be reported by the Contractor to the CONTRACTING OFFICER, (KO), Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665.

Grade Stake Recovery; G, OP

After completion of the project, the Contractor shall provide a letter to the Contracting Officer certifying that all grade stakes have been recovered in accordance with the Contractor's approved Construction and Grade Stake Recovery Plan.

Buoy and Anchoring Inventory Recovery; G, OP

After completion of the project, the Contractor shall provide a letter to the Contracting Officer certifying that all anchors, buoys, buoy cables used in the construction of the project have been recovered.

Notification of Discovery of Archeological Sites; G, OP, PD

The Contractor shall immediately notify the Project Archaeologist, Mr. Patrick O'Day, if any shipwreck, artifact, or other objects of antiquity that have scientific or historical value, or are of interest to the public, are discovered, located, and/or recovered. Reporting shall meet the requirements of Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS, subparagraph "Recording and Preserving Historical and Archeological Finds" and APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

Notice of Misplaced Material; G, OP

The Contractor shall notify the U.S. Coast Guard Marine Safety Office of any misplaced material as stated in Clause OBSTRUCTION OF NAVIGABLE WATERWAYS of Section 00700 CONTRACT CLAUSES.

SD-11 Closeout Submittals

Project Completion Report; G, OP, PD

The Contractor shall submit a Project Completion Report in Adobe PDF format to the Contracting Officer within 30 days following project completion. The Project Completion Report shall include but not be limited to the following:

a. Names and titles of the project managers overseeing the effort, including contact information (telephone numbers, mailing addresses, and email addresses)

- b. Location and description of the project, including the final total volume of sand resources extracted from each borrow area and the volume of sand resources actually placed (including a description of the volume calculation method used to determine these volumes)
- c. ASCII files containing the x, y, z and time stamp of the cutterhead locations (if applicable)
- d. Narrative describing the final, as-built features, boundaries, and acreage, including the restored beach width and length
- e. A table, showing the various items of work construction, final quantities, and monetary amounts
- f. A listing of construction and construction oversight information, including the prime and subcontractor(s), contract costs, etc;
- g. A list of all major equipment used to construct the project
- h. A narrative discussing the construction sequences and activities, and, if applicable, any problems encountered and solutions
- i. A list and description of any construction change orders issued (if applicable)
- j. A list and description of any safety-related issues or accidents reported during the life of the project
- k. A narrative and any appropriate tables describing any environmental or compliance surveys or efforts associated with the project and costs associated with these surveys or efforts
- l. A table listing significant construction dates beginning with bid opening and ending with final acceptance of the project
- m. Digital appendices containing the as-built drawings, fill cross-sections, and survey data
- n. The Contractor shall include all archaeological monitoring reports as an appendix to the Closeout Submittal report and prepare a summary of any notable observations or findings. A copy of the final archaeological monitoring report shall be sent to the project archaeologist, Mr. Patrick O'Day. Additional reporting requirements and details regarding archaeological Closeout Submittals may be found in APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

#### 1.4 PROJECT SCOPE

The Contractor shall provide the dredge and support vessels, labor, equipment, supplies, and materials to perform all operations for excavating, transporting, placing, dressing and grading satisfactory fill as indicated in the drawings and further specified herein. The Contractor shall accomplish the work in such a manner so as to minimize disruption to maritime traffic or use of the public island as well as minimize impacts to

existing infrastructure.

#### 1.4.1 Project Order of Work

The project extends along East Ship Island continuing to West Ship Island, Mississippi along stations 0+00 to 56+00 in the Phase III template and 125+00 to 286+00 in the Phase IV template as shown on the Contract Drawings.

At the Preconstruction Conference, the Contractor shall propose the order in which the work will be performed, including the anticipated progression of satisfactory fill placement throughout the project area and excavation of the borrow areas.

The Contractor is not required to excavate material from every borrow site shown on the Contract Plans and may elect to forgo the use of one or more sites based on their equipment selection(s), operating efficiency, field conditions, etc.

Guidelines on the use of the Contract borrow sites are described in Part 3, Execution, Sub-Part 3.2, Excavation.

The Contractor shall submit their proposed borrow site excavation and placement preferences for approval in the Pre-Construction Submittal General Work Plan.

Phase III template: Sand shall be pumped into the Phase III project template from west (Station 56+00) to east (Station 0+00) to allow construction under this Contract to originate from material that has been mechanically placed under a previous contract and work east towards the archaeological monitoring area. All equipment shall originate from the fill material outside of the archaeological monitoring area.

Phase IV template: The Contractor shall place satisfactory fill within the template such that the fill acceptance progresses from east to west along Phase IV or as otherwise directed by the QAR or COR.

The Contractor shall maintain a continuous filling operation, without any intervening gaps, from the initial placement location to the leading edge of the fill.

#### 1.4.2 Project Coordination

Project coordination with the Contracting Officer/Representative (KO/COR) and Quality Assurance Representative (QAR) shall occur during all phases of construction. Coordination also includes but is not limited to publication of the notice of intent to dredge and coordination with local officials including police, Public, NPS, US Coast Guard, and others as agreed during coordination meetings. Submittal of the Notice of Intent to Dredge is described in the SD-07 Certificates requirements of this document. Submittal requirements for Dredge Progress Reports are described in SD-06 Test Reports.

##### **TRIBAL COORDINATION:**

Federally Recognized Tribes identified in the 2011 NAGPRA Plan of Action shall be provided access to the archaeological monitoring and associated work areas covered under this Contract as described in APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

Forty-eight (48) hours' notice is required for Tribal visits, which may be



coordinated through the Project Archaeologist, Mr. Patrick O'Day, for the length of the project to ensure that resources significant to the Tribes are protected and treated with respect and dignity. Tribal monitoring will be conducted by no more than two representatives at a time and shall be selected by the Federally Recognized Tribes identified in the 2011 NAGPRA POA.

The Project Archaeologist, Mr. Patrick O'Day, shall coordinate Tribal visits with the project Team and accompany Tribal monitors during their visit(s). Tribal monitors shall be required to comply with the site safety requirements for Personal Protective Equipment (PPE) and related protocols.

#### 1.4.3 Project Work Permits and Responsibilities

The Contractor's attention is directed to the Clause PERMITS AND RESPONSIBILITIES of Section 00700 CONTRACT CLAUSES and paragraph 1.2 APPLICABLE REGULATIONS of Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS. Any other licenses or approvals required for the prosecution of the work shall be secured and paid for by the Contractor. The Contractor shall obtain any and all approvals required to conduct the work specified in this contract.

##### 1.4.3.1 Project Traffic and Navigation

The Contractor shall so conduct their operations that they shall not close any thoroughfare nor interfere in any way with traffic on railway, highways, or on water, without the written consent of the Contracting Officer. The regulations the Contractor shall adhere to are those established by, but not necessarily limited to, the Department of the Navy, U.S. Coast Guard, Department of the Army, American Bureau of Shipping, Department of Interior, Mississippi Department of Transportation, Mississippi Law Enforcement Agencies, county and municipal.

#### 1.4.4 Protection of Existing Structures from Construction Activity

The Contractor shall be responsible for determining and documenting the pre-construction condition of existing structures within the project area including staging site(s) and work access. The Contractor shall take appropriate measures to prevent damage to any structures during construction, and for performing a post-construction verification inspection of those structures previously inspected.

IN ADDITION TO THE TYPICAL SITE CONDITION DOCUMENTATION AND PROTECTION, ADDITIONAL REQUIREMENTS AND PROCEDURES ARE SPECIFIED IN APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

##### 1.4.4.1 Damages to Adjacent Property and Structures

Any damage to private or public property within the project boundaries, including staging site(s) and work access areas/roads, shall be repaired promptly by the Contractor. Any damage as a result of the Contractor's operations shall be repaired at no cost to the Government.

DAMAGES TO HISTORICAL OBJECTS OF ARCHAEOLOGICAL OR CULTURAL SIGNIFICANCE SHALL BE IMMEDIATELY REPORTED BY THE CONTRACTOR TO THE CONTRACTING OFFICER, (KO), Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#:

251-441-5665, AND THE PROJECT ARCHAEOLOGIST, MR. PATRICK O'DAY,  
#251-690-2326.

#### 1.4.5 Project Work Violations

Work done in violation of these specifications or a verbal or written stop order of the Contracting Officer will be considered as unsatisfactory progress for purposes of progress payments in accordance with clause PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS of Section 00700 CONTRACT CLAUSES.

#### 1.4.6 Project Final Cleanup

Final cleanup, as stated in the paragraph COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK of Section 00700 CONTRACT CLAUSES, shall include the removal of all of the Contractor's plant and equipment either for disposal or reuse. Plant and/or equipment to be disposed of shall ONLY be disposed of in a manner and at locations approved by the Contracting Officer. Unless otherwise approved in writing by the Contracting Officer, the Contractor will not be permitted to abandon pipelines, pipeline supports, pontoons, or other equipment in the work area, pipeline access areas, water areas, or other areas adjacent to the work site. Pilings and any other debris removed or created as a result of the execution of this contract shall be disposed of in a manner and at locations approved by the Contracting Officer.

#### 1.5 ENVIRONMENTAL PROTECTION

The Contractor shall protect the environment during all phases of work. See Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS for additional details.

ADDITIONAL REQUIREMENTS FOR ENVIRONMENTAL PROTECTION ARE SET FORTH IN APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

##### 1.5.1 Pumping of Bilges

Contractors are warned that pumping oil or bilge water containing oil into navigable waters, or into areas which would permit the oil to flow into such waters, is prohibited by Section 13 of the River and Harbor Act of 1899, approved 3 March 1899 (30 Stat. 1152; 33 U.S.C. 407). Violation of this prohibition is subject to penalties provided under the referenced Act.

##### 1.5.2 Fuel Oil Transfer Operations

In accordance with U.S. Coast Guard regulations (33 CFR 156.120), couplings used in fuel oil transfer operations on any vessel with a capacity of 250 or more barrels of oil shall be either a bolted or full-threaded connection; or a quick-connect coupling approved by the Commandant; or an automatic back-pressure shutoff nozzle used to fuel the vessel. An executed fuel oil transfer (Declaration) form signed by the tanker operator shall be submitted to the Contracting Officer for each refueling operation. The U.S. Coast Guard shall also be notified prior to any refueling. Submittal of the Declaration of Inspection is described in SD-03 Product Data.

##### 1.5.3 Turbidity

Excavation, transport, and filling operations shall be performed in a

manner that will minimize turbidity. The Contractor shall meet the requirements to maintain the quality of the State's waters as stipulated in paragraph 1.2 APPLICABLE REGULATIONS and paragraph 1.4 SUBCONTRACTORS contained in Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS. The Contractor will be required to make inspections, measurements and observations required by those regulations in the vicinity of the dredge, the fill placement site and adjacent sea grass beds. Further information regarding protection of sea grass beds is provided in paragraph "Protection of Existing Seagrass Beds" below.

#### 1.5.4 Protection of Existing Seagrass Beds

The Ship Island Phase III and IV beach and dune fill Contractor shall be solely responsible for ensuring compliance with the turbidity standards throughout the duration of their contract. The beach and dune fill Contractor shall employ placement techniques or other measures to minimize turbidity in the vicinity of the seagrasses and ultimately meet the turbidity standards outlined in Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS, 3.2 PROTECTION OF WATER RESOURCES. The Contractor shall be responsible for the installation and maintenance of turbidity protection measures throughout the life of this beach and dune fill project. In the event turbidity levels exceed allowable levels within the seagrass beds, the Contractor shall alter the placement techniques/location of their turbidity protection measure(s) or take other measures, as needed, at no additional cost to the Government. The locations of the existing seagrass beds are shown on sheet CB-110 of the Contract Drawings.

#### 1.5.5 Cultural Resources Protection

The Contractor shall protect cultural resources during all phases of the project. The location of known cultural resource areas will be provided to the Contractor at the pre-construction conference. There are known culturally sensitive areas located within the construction footprint. Due to the sensitivity of these areas, they shall/must remain buried under a specified lift thickness of satisfactory fill material. An initial partial deposition of material over one of the known sites should have occurred during Phase II of the Ship Island beach and dune fill construction. It shall remain the responsibility of the Contractor for Phases III and IV to ensure that the culturally sensitive areas are buried to the depth that has been specified for their locations.

Site specific construction terms and conditions shall be provided to the Contractor at the pre-construction meeting for the archaeological monitoring area referenced within this Specification and APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS. THESE SITE-SPECIFIC CONDITIONS SHALL BE STRICTLY ADHERED TO AT ALL TIMES DURING CONSTRUCTION. VIOLATIONS OF THESE SITE CONDITIONS SHALL IMMEDIATELY BE REPORTED BY THE CONTRACTOR TO THE CONTRACTING OFFICER, (KO), Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665 AND THE PROJECT ARCHAEOLOGIST, MR. PATRICK O'DAY, #251-690-2326.

**IF** site-specific conditions ARE **NOT** PROVIDED for any sensitive area within the project footprint, then that area shall be buried with at least thirty (30) inches of satisfactory fill material before any equipment is allowed to pass over the site.

Post-award questions related to these culturally sensitive areas shall be immediately addressed to the COR to ensure a prompt resolution.

Phase III pre-construction condition surveys will be provided to the Contractor for assessing site conditions prior to the start of Phase III construction. No additional penetration may occur within the archaeological monitoring area beyond the fill being placed under this Contract. Spudding and any other type of penetration below the seafloor for access will be limited to areas designated on sheet CB-111 of the Contract Plans, which have been cleared for cultural resources.

A Maritime avoidance area is located in areas of potential anchoring, spudding and pipeline laying. No anchoring, pipeline laying or spudding shall occur within 165 feet (50 m) of this site. The areas identified as "access corridors" have been cleared for cultural resources to -12 feet NAVD 88. Consequently ground disturbance can take place within the corridors to that elevation. This includes dredging, driving of temporary pilings, or any combination thereof. No disturbance in the corridors shall exceed the -12 feet NAVD88 elevation. No other ground disturbance shall be allowed to occur outside of the minimal disturbance of the pipeline within National Park Service (NPS) waters.

All borrow areas have been surveyed and cleared for cultural resources. Anchoring at the borrow areas shall be restricted to within 150 feet of the borrow area limits provided on the Contract Drawings.

In addition to the areas surveyed and cleared for cultural resources, additional surveys may be required outside of NPS submerged bottomlands for necessary spudding, anchoring, or laying pipeline on the seafloor. Since these surveys are likely to cross submerged bottomlands controlled by both the State of Mississippi and the Bureau of Ocean Energy Management, a survey strategy has been devised that satisfies the Phase I maritime cultural resources survey requirements of the State of Mississippi, the Bureau of Ocean Energy Management, and the US Army Corps of Engineers. Specifically, the contractor will be required to conduct Phase I maritime survey by a qualified maritime archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards at survey transects that do not exceed 30 meters using a side-scan sonar of at least 600 kHz resolution, an Overhauser or cesium-vapor magnetometer, and sub-bottom sonar. All data must be collected and georeferenced using Differential Global Positioning System (DGPS).

The Contractor may perform additional Phase I maritime surveys for the purpose of gaining additional access to areas that were not previously investigated for cultural resources or to further investigate previously identified anomalies.

An area described on sheet CB-111 of the Contract Plans as the "Bid Assumption Archaeological Survey Area" has been delineated to identify where the Contractor may need to perform additional Phase I/cultural resource surveys to increase site access or gain additional clearance to anchor, spud, or lay pipeline.

For Contract bidding purposes, the Contractor shall assume that they will have pipeline access within the "Bid Assumption Archaeological Survey Area". If the Contractor chooses to perform a maritime survey within the Bid Assumption survey area and is cleared to lay pipeline, the Contractor shall maintain a water depth of -12 MLLW above the pipeline at all times for equipment located north of the NPS pier to ensure ferry access.

The Contractor is not required to perform a cultural resources survey in this area unless they believe it is necessary to expand the areas in which they

may anchor/spud/lay pipeline or to enhance site access.

The Contractor shall be required to ensure that any/all cultural resource surveys have been completed and submitted for coordination and approval to the USACE Archaeologist, Mr. Patrick O'Day, prior to performing any and all work activity in areas that have not been previously surveyed for cultural resources and cleared for anchoring, spudding, or laying pipeline.

Please refer to 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS and APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS, for further details on cultural resource protection.

#### 1.5.6 Archaeological Sites

If any shipwreck, artifact, or other objects of antiquity that have scientific or historical value, or are of interest to the public, are discovered, located, and/or recovered, the Contractor acknowledges that:

a. The site(s), articles, or other materials are the property of the State or Federal Government.

b. Shall immediately notify the QAR, the archaeological monitor, and the Project Archaeologist, Mr. Patrick O'Day.

Refer to subparagraph "Recording and Preserving Historical and Archeological Finds" of Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS and APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS for additional details regarding archaeological sites. Procedures for the Notification of Discovery of Archeological Sites are described in the submittal requirements for SD-07, Certificates, described at the beginning of this Specification.

#### 1.6 NOTIFICATION OF COAST GUARD

##### 1.6.1 Navigation Aids

Navigation aids located within or near the areas required to be dredged will be removed, if necessary, by the U.S. Coast Guard in advance of dredging operations. The Contractor shall not remove, change the location of, obstruct, willfully damage, make fast to, or interfere with any aid to navigation. The Contractors' responsibilities regarding dredging adjacent to navigation aids are further outlined in the requirements of the Relocation of Navigation Aids SD-01 Preconstruction Submittals referenced at the beginning of this specification.

##### 1.6.2 Dredging Aids

The Contractor shall obtain approval from the U.S. Coast Guard for all buoys, dredging aid markers to be placed in the water, and dredging aid markers affixed with a light prior to the installation. Dredging aid markers and lights shall not be colored or placed in a manner that they will obstruct or be confused with navigation aids.

#### 1.7 WORK AND ACCESS AREA

The Contractor shall comply with work and access area requirements indicated herein and described in paragraphs 3.2 PROTECTION OF WATER RESOURCES and paragraph 3.4 PROTECTION OF LAND RESOURCES of Specification Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS.

NO STAGING OF EQUIPMENT SHALL OCCUR BETWEEN STATIONS 00+00 AND 59+00 OR ON THE NATIVE BEACH ADJACENT TO THESE STATIONS.

#### 1.8 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals. Lights and day signals shall 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 shall be displayed on dredge pipe lines, and day signals shall be displayed by vessels of more than 65 feet in length and floating plant vessels moored or anchored in a fairway or navigable channels where other vessels pass. Lights and days signals shall also comply with the requirements of paragraph 3.5 PROTECTION OF FISH AND WILDLIFE described in Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS, the Secretary of the Army, and 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.

#### 1.9 CRANE AND DRAGLINE SAFETY REQUIREMENTS

All cranes and draglines used in performing the work set forth in these specifications shall comply with EM 385-1-1. Please refer to Section 01 35 26 GOVERNMENTAL SAFETY REQUIREMENTS for further details.

### PART 2 PRODUCTS (NOT USED)

### PART 3 EXECUTION

#### 3.1 OVERALL WORK AREA PROVISIONS

The beach and dune fill and borrow area limits available to the Contractor for accomplishing the work are shown on the drawings. The Contractor shall accomplish the work in such a manner so as to minimize disruption to traffic and use of the public island as well as keep all work areas in a neat, orderly and safe manner. The Contractor will be required to maintain all access and all other work areas within or without the project boundaries free from dust and noise which would cause a hazard or nuisance to others.

##### 3.1.1 Construction Plans and Contract Documents

A minimum of one (1) complete set of construction plans (drawings) and contract documents (with permits and Notice to Proceed placards) shall be kept in the construction site field office. The dredge must have a complete set of drawings, including borrow area coordinates, at all times to avoid fill placement or dredging outside the specified limits.

##### 3.1.2 Staging and Access Areas

- a. Access and staging areas located on the existing island not including excavated areas for access as discussed in Section 01 00 00 paragraph 1.12 shall be restored to the pre-construction condition upon project completion, at cost to the Contractor, unless otherwise directed by the COR.

b. The staging areas shall be kept neat, orderly and in a safe manner.

c. The Contractor shall cordon off and/or fence the staging areas to secure all staging areas from the public.

d. For staging areas, construction equipment shall be located off the seaward beach face as much as practicable during sea turtle nesting season. Regardless of time, all construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing dune system. Temporary storage of pipes shall be off the seaward beach face to the maximum extent possible. If the pipes are placed on the seaward beach face, they shall be placed in a manner that will minimize the impacts to nesting habitat. The staging areas shall not be used for stockpiling of template fill material.

e. The Contractor shall be responsible for providing and maintaining all water and land access routes necessary for their equipment and plant to and from the work sites.

f. The Contractor shall ascertain the environmental conditions which can affect water and land access, such as climate, terrain, winds, current, waves, swells, depths, shoaling, and scouring tendencies.

g. The Contractor will limit staging and storage of equipment to the portions of the island that were mechanically placed. These activities are prohibited on the native beach surface.

h. The Contractor SHALL NOT ALLOW excavation or anchoring of vessels or equipment in the shallow offshore areas adjacent to the Phase III template (between Stations 0+00 to 59+00). Personnel or equipment on/off-loading in these areas is allowed, however, anchoring for any duration is prohibited (e.g., near Station 0+00).

SEE SUB-PART 1.7, WORK AND ACCESS AREA, OF THIS SPECIFICATION AS WELL AS SPECIFICATION SECTION 01 57 19, TEMPORARY ENVIRONMENTAL CONTROLS, SUB-PART 3.2, PROTECTION OF WATER RESOURCES, AND SUB-PART 3.4, PROTECTION OF LAND RESOURCES, FOR ADDITIONAL INFORMATION RELATED TO STAGING AND ACCESS AREAS.

#### 3.1.2.1 Existing Conditions Documentation

At all access sites and staging areas to be used, the Contractor shall:

a. Photo-document the condition of the access location prior to disrupting the site. All photographs shall be GPS tagged.

b. Limit access width through existing vegetation to 20 feet or less.

c. Replace any fencing or signage disturbed by the Contractors' activities.

ADDITIONAL REQUIREMENTS FOR EXISTING CONDITION DOCUMENTATION ARE SET FORTH IN APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS.

### 3.1.3 Public Protection

a. The Contractor will be required to exclude the public for safety purposes from the work areas in the vicinity of the hydraulic fill placement, grading and transporting operations, or any other area which may present a safety risk to the public, such as the discharge end of their pipeline and all associated equipment such as fuel tanks, booster pumps, etc.

b. The Contractor shall minimize the areas closed to the public.

#### 3.1.3.1 Work Area Signs and Barriers

The Contractor shall install warning signs to warn the public and all commercial and recreational boats of all construction activities.

a. Any existing signs, buoys or other structures within the work lines shall be protected and/or removed and later replaced by the Contractor as directed.

b. The Contractor shall be required to erect, maintain, and move as necessary, a restrictive barrier around the active construction zone including the area of discharge of the hydraulic pipeline (or other mechanical off loader), where bulldozers are working, or any other active area where work may present a safety hazard to the public. In the vicinity of the discharge, the barrier shall be constructed so as to prevent the public from approaching the discharge from any direction closer than 100 feet, and will provide an area sufficient in size for the safe progression of the Work. The Contractor shall post signs in a conspicuous manner designating the closed area.

c. The Contractor shall post signs in a conspicuous manner stating "DANGER - HIGH PRESSURE DISCHARGE FROM DREDGE".

d. Enforcement shall be the Contractor's responsibility at no additional cost to the Government. The enforcement shall be coordinated with local enforcement agencies, and will be subject to approval of the Contracting Officer.

#### 3.1.3.2 Dedicated Safety and Flag Person

The Contractor shall have a dedicated safety and flag person on site at all times, whose sole responsibility is preventing the public from entering the work area. Additionally, the Contractor shall place a safety person at the discharge end of the disposal pipeline. The safety person shall be present at all times during discharge operations and will maintain radio communication between the dredge and the discharge operation.

### 3.1.4 Noise Control

#### 3.1.4.1 Hauling and Excavating Equipment

All hauling and excavation equipment including dredges used on this work shall be equipped with satisfactory mufflers or other noise abatement devices. The Contractor shall conduct his operations so as to comply with all federal, state, and local laws or ordinances pertaining to noise abatement. The use of horns, bells, or the use of whistle signals shall be held to the minimum necessary in order to ensure as safe and as quiet an



operation as possible.

#### 3.1.4.2 Booster Pumps Noise Control

Booster pumps used on this work shall be equipped with satisfactory mufflers and/or other sound abatement devices to reduce engine noise. A sound barrier will be constructed landward of booster pumps in order to reflect noise waterward. The Contractor shall conduct his operations so as to comply with all Federal, State, and local laws pertaining to noise.

#### 3.1.4.3 Sound Pressure Measurements

a. Sound pressure measurements shall be made with a sound level meter and shall be reported to the Contracting Officer under provisions for contractor quality control.

b. The measurements shall be made by personnel qualified to make such measurements and whose credentials have been verified by the Contracting Officer.

c. For Land based equipment other than booster pumps, sound pressure measurements shall be made at distances of 50 feet, 100 feet, 300 feet, and 500 feet from each major piece of equipment such as draglines, dump trucks, dewatering pumps, pneumatic drills, bulldozers, etc., at locations approved by the Contracting Officer. The measurements shall be taken during operations every 4 weeks.

d. Sound pressure measurements shall be made by the Contractor at 50-foot, 100-foot, 200-foot, and 300-foot distances from the (1) dredge, (2) booster pumps, if any, and (3) dredge pipeline at locations approved by the Contracting Officer. These measurements shall be taken during pumping operations every 4 weeks. The sound pressure measurements and type of material being dredged at the time measurements are taken shall be reported to the Contracting Officer. Sound pressure measurements shall be made twice at the direction of the Contracting Officer during the first 4 weeks of use of whistle signals and drill barges in operation at 50-foot, 100-foot, 200-foot, and 300-foot distances.

e. Temperature, atmospheric pressure and general weather conditions shall also be recorded with the measurements.

f. In addition to the testing indicated above, more testing may be requested by the Contracting Officer.

#### 3.1.5 Buoy and Anchoring Inventory

The Contractor shall inventory all anchors, buoys, and buoy cables deployed in the prosecution of work in a manner acceptable to the Contracting Officer. The Contractor shall use this information to account for and recover these items upon completion of work. Submittal requirements for the Buoy and Anchoring Inventory are listed under the SD-01 Preconstruction Submittals General Work Plan and SD-07 Certificates Buoy and Anchoring Inventory Recovery.

#### 3.1.6 Protection of Existing Vegetation

The Contractor shall avoid impacts to existing vegetation including trees as much as possible or as directed by the Contracting Officer

Representative. Should existing trees fall or need to be removed for operational and safety issues within the fill template the Contactor shall place the trees along the landward most extents of the fill in a manner that will not compromise the integrity of the dune systems. The contractor shall not bury any fallen trees within the fill or remove trees from the limits of the fill template.

### 3.2 EXCAVATION

#### 3.2.1 General

All excavation for satisfactory fill shall be performed within the limits and depths of borrow area shown on the drawings. The Contractor shall dredge no deeper than the maximum elevation shown on the contract plans and cross-sections. The contractor shall conduct pre-construction and post-construction surveys of the borrow area in accordance with 01 00 00 ADDITIONAL SPECIAL CONTRACT REQUIREMENTS.

The contractor shall compute the required dredge and allowable dredge volumes. All computations shall be performed and submitted in accordance with 01 00 00 ADDITIONAL SPECIAL CONTRACT REQUIREMENTS. The contractor shall deplete all sand by volume (100% removal) in the required borrow area dredge prism for each specified borrow area unless the fill template is completed during the excavation of a borrow area (i.e. the government will not pay for unnecessary excavation once the template is completed). The contractor will be allowed to use allowable dredge volumes to compensate for required dredge volumes in determination of borrow area depletion (i.e., at a minimum, the Contractor must remove a total volume for each borrow area equal to 100% of the volume within the required dredge prism).

To achieve that volume, the Contractor will be allowed to remove material from the allowable vertical and horizontal dredge prisms (see areas on sheets CB-112, CB-113, CB-114, CB-115, and CB-116 of the Contract Drawings for the only horizontal allowable areas). If using multiple types of dredge equipment, the Contractor will be allowed to work in separate borrow areas for each dredge apparatus being used.

Existing conditions of the borrow area are represented on the hydrographic survey and core boring logs in the Geotechnical Data Appendix. The Contractor shall make their own interpretation(s) of the Geotechnical information in determining the character of materials to be excavated. Excavation shall be performed in a uniform and continuous manner so as to avoid creating multiple holes, valleys, or ridges.

The Contractor is not required to excavate out of every one of the borrow sites shown on the Contract Plans.

The following limitations shall apply to the excavation and placement of fill material from the borrow sites shown on the Contract Plans:

The PBP-OCS-East sites 2-5 and PBP-MS borrow site material may be placed on either the Phase III or Phase IV template.

IF USED, the Ship Island Pass (Old Gulfport Channel) borrow site material shall be placed on the easternmost end of the Phase III (3) template, approximately between Stations 0+00 and 25+00.

IF USED, the Ship Island borrow site material shall ONLY be placed within the Phase IV (4) template.

See Part 1.4, Project Scope, Sub-Part 1.4.1, Project Order of Work, for additional information regarding borrow site selection(s).

Anchoring of a hopper dredge to excavate at a specific location shall not be performed. If continuous reaches of rock or clay are encountered in the borrow area, the Contractor shall change the location and depth of excavation within the borrow limits when necessary to provide the best satisfactory fill material available. Areas of rock and clay avoided in the borrow area will not be accounted for as required dredged volume for that borrow area.

The location of unsuitable material encountered within the borrow area shall be noted on the Contractor's Quality Control Report. If the QAR determines that the fill material is not suitable for placement, the Contractor shall work with the Government to identify areas within the borrow sites that may contain more suitable material and avoid future passes in areas where the fill quality was "unsuitable".

### 3.2.2 Obstructions

A magnetometer survey was conducted at the borrow sites, access channels, and satisfactory fill template with construction access shown on sheet CB-111 and survey results shown on sheets CB-118 through CB-121 of the Contract Plans for informational purposes. The contractor shall submit for approval an Obstruction Identification and Removal Plan to the COR prior to the start of dredging in the designated borrow area as described in the Pre-Construction submittals described in Specification Section 01 57 19, TEMPORARY ENVIRONMENTAL CONTROLS. Any obstructions that need to be removed from the borrow or access channels to complete the work shall be approved by the COR and shall be disposed of in areas provided by, and at the expense of, the Contractor. The Contractor should make his own investigation of submerged, surface, and overhead obstructions in the work areas and other locations the Contractor finds necessary to traverse. The exact location, depths, and height of submarine cables, pipes, highlines, docks, piers, bridges, etc. (as applicable) are not known, and it will be necessary for the Contractor to ascertain interference problems and notify the respective owners in advance of dredging operations. The Contractor shall make all arrangements with the respective owners of the structure to assure satisfactory completion of dredging in the vicinity with minimum interruption of service, and shall perform operations in such a manner as will avoid damage to these facilities. Submittal requirements for the Obstruction Identification and Removal Plan are described in SD-01 Preconstruction Submittals.

THE LOCATION OF SURVEY ANOMALIES MAY BE FOUND IN APPENDIX D OF THE CONTRACT DOCUMENTS. ADDITIONAL SURVEY DATA SHALL BE PROVIDED TO THE CONTRACTOR AT THE PRE-CONSTRUCTION CONFERENCE.

#### 3.2.2.1 Unexploded Ordnance

Should Unexploded Ordnance be encountered, the Contractor shall be entitled to an equitable adjustment or reimbursement for all work stoppage associated with unexploded ordnance. Each encounter shall be handled on a case by case basis. The following shall be the Standard Operating Procedure when unexploded ordnance is encountered:

- a. Cease dredging operations,

- b. Contact Coast Guard MSU,
- c. Contact U.S. Army Corps of Engineers Quality Assurance Representative
- d. Comply immediately with directions from the Coast Guard MSU

### 3.2.3 Dredge Location Control

The Contractor shall have, in continuous operation on the dredge, electronic positioning equipment that will accurately and continuously compute and plot the position and the deepest penetration of the dredge. Submittals for Electronic Tracking System Charts and Dredge Location Control Color-Coded Plots are described in the SD-02 Shop Drawings requirements of this specification section. Submittal procedures for Equipment and Performance Data are described in the SD-03 Product Data requirements of this specification section.

#### 3.2.3.1 Hopper and Scow Dredge Control

See Section 35 20 23.13 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM SCOW - MONITORING PROFILE and Section 35 20 23.23 and NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM HOPPER DREDGE. However, in the event of NDQMP System failure (not fully operational), the Contractor shall notify the Contracting Officer and continue tracking using the vessel electronic positioning equipment for up to 48 hours until the NDQMP System is fully operational and in use. If, upon NDQMP System failure, the Contractor cannot use vessel electronic positioning equipment or cannot use the NDQMP System within 48 hours of failure, all dredging operations for the vessel shall cease until the NDQMP System is fully operational. Any delays resulting from NDQMP System failure shall be at the Contractor's expense.

#### 3.2.3.2 Other Dredge Type Control

Dredge types shall meet all of the following requirements, and this information shall be compiled and submitted to the Contracting Officer bi-weekly:

- a. The Contractor is required to have electronic positioning equipment that shall horizontally locate the dredge when operating on the project, as well as determine the depth of dredging. Continuous locations of the dredges shall be made at all times during dredging.
- b. A color-coded plot, in the project reference datum, of the draghead, cutterhead, or other hydraulic or mechanical dredging device shall also be recorded daily depicting the vertical and horizontal limits of the material dredged that day. Any horizontal or vertical dredge violations shall be clearly defined.
- c. The Contractor is required to calibrate the equipment as required by the manufacturer or as required by the Contracting Officer. Proof of calibration shall be submitted to the Contracting Officer.
- d. For Horizontal control, the location of the dredge is to be computed by coordinates with a probable range error not to exceed +/- 3 feet. The Contractor's method of horizontal location of the dredge intake shall be submitted for review. LORAN-C shall not be permitted for location control.

e. The Contractor is also required to have a depth of dredging indicator accurate to within +/- 0.5 foot. The instrument used shall indicate the depth of dredging at all times. This equipment shall include real-time measurement of the water (tide) level. The reported elevation of dredging shall be adjusted by the measured water level elevation and shall have a probable range error not to exceed 1-foot vertical.

f. If the dredge is outside the borrow area limits, the Contractor shall provide reasons the dredge is outside the borrow area limits such as turning around annotated on the position chart. Add notation in the Contractor's Quality Control Report for each occurrence.

#### 3.2.4 Deduction for Nonconforming Work

Satisfactory fill shall be obtained from the designated borrow area only. Fill that is obtained from unauthorized areas will not be paid for under this contract. Excavation in such area(s) is a violation of State and Federal certifications and/or leases. The contractor shall conduct pre-construction and post-construction surveys of the borrow area in accordance with 01 00 00 ADDITIONAL SPECIAL CONTRACT REQUIREMENTS. If it is determined by the Contracting Officer Representative that dredging has been performed outside the borrow area(s) limits or below the limiting elevation within the borrow areas, the quantity of the material dredged from these areas will be computed and subtracted directly from the pay quantity of material placed in the fill template. Similarly, if it is determined by the Contracting Officer Representative that the entire borrow area is not depleted as required in paragraph 3.2.1, EXCAVATION, General, the quantity of remaining sediment in the borrow area shall be deducted directly from the pay quantity of material placed in the fill template. If there is more material in the last borrow area than is needed to meet the final satisfactory fill template, the contractor shall not be required to deplete the last borrow area that is worked in to its entirety as required in paragraph 3.2.1, EXCAVATION.

Please refer to Appendix C with a table showing the volumes within the required templates (i.e. depletion requirements) and allowable overdepth templates for each borrow area and the sub-areas within the borrow area.

#### 3.3 TRANSPORT OF EXCAVATED MATERIALS FOR SATISFACTORY FILL

The method of transporting the fill from the offshore borrow area to the fill area shall be approved by the Contracting Officer.

##### 3.3.1 Hopper Dredge/Scow

A hopper dredge or barge with pump-out capabilities may be used for transport of the excavated material. Overflow at the borrow site during loading will be permitted to the extent that turbidity and water quality standards required by Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS are met. The Contractor shall limit the loading to partial loads, if necessary, to meet turbidity and water quality requirements permitted at the borrow site. No overflow or spillout will be permitted during transport to the discharge site.

#### 3.3.1.1 Mis-Dump

Any scow load or hopper dredge load that is released within waters outside of the fill template will be classified as a mis-dump and will result in a suspension of disposal operations and prompt monitoring of affected areas. Redredging of such materials may be required as a prerequisite to the resumption of dredging unless the Contracting Officer, at their discretion, determines that redredging of such material is not practical. In addition, the Contractor shall notify the Contracting Officer within 24 hours of a misplaced dump. Corrective actions shall be implemented by the next offload at no additional expense to the Government, and the Contracting Officer shall be informed of actions taken. Any computed volume of mis-dump material that is not ultimately placed within the fill template, shall be deducted from the pay quantity in the template.

#### 3.3.2 Pipeline Transportation

A pipeline dredge or hydraulic unloader may be used to transport material to the project placement site. The Contractor shall maintain a tight discharge pipeline at all times. The joints shall be so constructed as to preclude spillage and leakage. If a dredging technique is used for this project that requires anchoring, no anchoring shall occur within 165 feet (50 m) of known cultural resources. Reference paragraph 1.5.5 Cultural Resources Protection for additional cultural resource protection requirements. If pilings are used for anchorage at the fill site, the pilings shall be well marked and removed in their entirety upon completion of the Contractor's operation.

##### 3.3.1 Submerged Pipeline

In the event the Contractor elects to submerge their pipeline, the pipeline shall rest on the bottom, and the top of the submerged pipeline and any anchor securing the submerged pipeline shall be no higher than the project depth for any navigation channel in which the submerged pipeline is placed. Should the Contractor elect to use a pipeline material which is buoyant or semi-buoyant, such as PVC pipe or similar low density materials, the Contractor shall securely anchor the pipeline to prevent the pipeline from lifting off the bottom under any conditions. The Contractor shall make daily inspections of the submerged pipeline to ensure buoyancy has not loosened the anchors. The Contractor shall remove all anchors when the submerged pipeline is removed. The location of the entire length of submerged pipeline shall be marked with signs, buoys, lights, and flags conforming to U.S. Coast Guard regulations.

##### 3.3.2 Floating Pipeline

Should the Contractor's pipeline not rest on the bottom, it will be considered a floating pipeline and shall be visible on the surface and clearly marked. In no case will the Contractor's pipeline be allowed to fluctuate between the surface and the bottom, or lie partly submerged. Lights shall be installed on the floating pipeline as required in paragraph SIGNAL LIGHTS above. The lights shall be supported either by buoys or by temporary piling, provided by the Contractor and approved by the Contracting Officer. Where the pipeline does not cross a navigable channel, the flashing yellow all-around lights shall be spaced not over 200 feet apart, unless closer spacing is required by U.S. Coast Guard personnel, in which case the requirements of the U.S. Coast Guard shall govern, at no additional cost to the Government.

### 3.3.3 Upland Pipeline

The Contractor shall maintain barricades, warning signals, and flagmen to ensure public safety in the vicinity of the pipeline discharge. Any damages to private or public property resulting from the Contractor's operations shall be repaired at no additional expense to the Government and to the satisfaction of the Contracting Officer.

AT LEAST 30 INCHES OF FILL MATERIAL SHALL BE PLACED BETWEEN STATIONS 0+00 AND 59+00 PRIOR TO THE PLACEMENT OF PIPELINE OR ANY OTHER EQUIPMENT OR MACHINERY.

ADDITIONAL PIPELINE REQUIREMENTS ARE SET FORTH IN APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS, SPECIFICATION 01 57 19, TEMPORARY ENVIRONMENTAL CONTROLS, AND APPENDIX B OF THE CONTRACT DOCUMENTS.

### 3.3.4 Visual Inspection of Pumpout and Pipeline Locations

a. A visual inspection shall be performed by the Contractor at the commencement of the initial pumpout operations. The first loads shall be pumped out during daylight hours. At the outset, the Contractor shall visually inspect all hose, pipeline, and connections from the scow to any boosters and from the booster all the way to the shore, as the dredge pumps clear water. Upon completion of the inspection and confirmation of no apparent leaks, the discharge of sand into the pumpout system shall commence.

b. A visual inspection of the floating pipe and the submerged pipeline shall be performed daily for signs of slicks, plumes, boils, or other surface anomalies that would indicate leaks, seepage, or failures.

### 3.4 Spillage and Leakage

Any fill which is lost in transit or permitted to flow into the offshore waters or onto the upland from the point the sand is discharged on the beach will not be subject to payment. The development of a leak shall be promptly repaired and the dredge and pumpout operations shall be shut down until repairs are completed to the satisfaction of the Contracting Officer. Failure to repair leaks or change the method of operations, which result in overflow, leakage or spillage that exceeds turbidity and water quality standards during loading and transport to the discharge site, will result in suspension of dredging and pumpout operations and prompt repair or change in operation.

#### 3.4.1 Pipeline

The pipeline corridor shall be visually inspected by the Contractor daily during period of active pumpout operations for signs of slicks, plumes, boils, or other surface anomalies that would indicate leaks, seepage, ruptures, or failures. All occurrences shall be indicated in the Contractor's QCR.

### 3.5 BEACH AND DUNE FILL

#### 3.5.1 General

All satisfactory fill excavated from the borrow area shall be transported to and deposited within the lines, grades, and cross section shown on the drawings except as may be modified by the provisions of subparagraph "Construction" below. The Contractor shall also maintain and protect the fill in a satisfactory condition at all times until acceptance of the work except as specified in subparagraph "Dressing for Payment" below. The Contractor shall ensure that material placed is in compliance with contract requirements. All dredged material will come from previously surveyed and approved borrow areas. See paragraph QUALITY CONTROL FOR BEACH AND DUNE FILL below.

#### 3.5.2 Construction

The fill area is subject to changes and the elevations at the time the work is done may vary from the elevations shown on the drawings. The Contracting Officer reserves the right to vary the width and grade of the berm from the lines and grades shown on the plans in order to establish a uniform fill for the entire length of the project. The fill cross sections shown on the drawings are for the purpose of estimating the theoretical amount of satisfactory fill needed and will be used by the Contracting Officer in making any change in the lines and grades. The Contractor will not be required to dress the fill below the mean high water to the slopes shown but will be required to do the dressing specified in subparagraph "Dressing for Payment" below.

THE CONTRACTOR WILL NOT BE REQUIRED TO GRADE THE 30-INCH LIFT OF FILL MATERIAL AT THE INTERFACE OF THE NATIVE BEACH AND CONSTRUCTION TEMPLATE LOCATED BETWEEN STATIONS 0+00 AND 59+00 AND SHOWN ON SHEET CB-500 OF THE CONTRACT PLANS.

##### 3.5.2.1 Construction Equipment Limitations

Grading and other construction equipment shall not be permitted outside the landward limit of fill at the time of construction except for designated ingress and egress to and from the site. Mobile equipment of any type operating within 50 feet of any structure as determined by the Contracting Officer shall be rubber wheeled. Tracked equipment shall not be permitted to operate within 50 feet of any structure as determined by the Contracting Officer. Hand tools may be required in these areas. A waiver to the 50 feet may be petitioned by the Contractor to the Contracting Officer if the Contractor can provide justification otherwise. A waiver does not relieve the contractor of liability for damages incurred.

ABSOLUTELY NO EQUIPMENT SHALL BE PLACED BETWEEN STATION 0+00 AND 59+00 AND NO MACHINERY SHALL TRAVERSE THE AREA WITHIN, OR SURROUNDING, THE PROJECT TEMPLATE BETWEEN STATIONS 0+00 AND 59+00 WITHOUT 30-INCHES OF FILL MATERIAL FIRST BEING PLACED. SEE SHEET CB-500 OF THE CONTRACT DRAWINGS AND APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS, FOR ADDITIONAL INFORMATION AND SPECIAL CONSTRUCTION REQUIREMENTS.

IN ADDITION TO SPECIAL CONSTRUCTION REQUIREMENTS, ALL EQUIPMENT THAT OPERATES BETWEEN STATIONS 0+00 AND 59+00 AND THE SURROUNDING AREA IS REQUIRED TO BE LOW GROUND PRESSURE (LGP) EQUIPMENT WITH A GROUND-BEARING PRESSURE EQUAL TO, OR LESS THAN, SIX (6) POUNDS PER SQUARE INCH (PSI).



FAILURE TO LIMIT CONSTRUCTION EQUIPMENT IN ACCORDANCE WITH THE CONTRACT DOCUMENTS SHALL IMMEDIATELY BE REPORTED BY THE CONTRACTOR TO THE KO, Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665 AND THE PROJECT ARCHAEOLOGIST, MR. PATRICK O'DAY, #251-690-2326.

### 3.5.2.2 Grade Stake Installation and Recovery Operations

Grade stakes left in the fill template after construction present a safety hazard to island visitors. It is the Contractor's responsibility to name a designated person whose responsibility is to track, locate, and completely remove all grade stakes in their entirety to the satisfaction of the Contracting Officer. This identified person shall have an alternate in place in the event the designated person is absent. Any grade stakes left in the fill template will be the sole responsibility of the Contractor. The Contractor is to remove all grade stakes immediately after the acceptance section has been completed and ready for public use. This search and removal of all the stakes shall be conducted by the Contractor prior to releasing the construction area to the public. Submittals for the Construction and Grade Stakes Recovery Plan are described in the SD-01 Preconstruction Submittals requirements of this specification section. Submittal procedures to document Grade Stake Recovery are described in the SD-07 Certificates requirements of this specification section. To ensure the safety of the public and that the contractor meets contract guidelines as it pertains to grade staking and removal, the Contractor shall perform, but is not limited to, the following duties:

**a. No construction or grade staking shall be allowed between Stations 0+00 and 59+00 (Phase III template). Any construction or grade staking used on Phase IV shall be made of steel pipe or other material that can, and will be, removed intact after filling as verified during final walk-through inspection. All stakes shall have sufficient length above grade so they may not be accidentally covered by fill.**

b. The Contractor shall inventory all construction grade staking used in the contract for installation as well as removal.

c. The grade stakes shall be consecutively numbered, approximately located, and recorded in the grade stake log using the construction baseline station provided on the plans.

d. The removal of each numbered pipe shall be recorded in the grade stake log at the time of the pipe/stake removal with the total removed count meeting the same placed within the noted stationing limits.

e. At the request of the Contracting Officer, the grade stake log shall be provided with the entire placed grade stake pipes displayed and counted after their removal to demonstrate those pipes that have been removed.

f. Sections of fill upon which the search for, and removal of, stakes is complete shall be documented in the Contractor's Quality Control Reports.

### 3.5.2.3 Longitudinal Dikes

a. Temporary longitudinal dikes and spreader and pocket pipe shall be used to prevent gullying and erosion of the satisfactory fill and to retain the satisfactory fill on the island and within the limits of the fill cross section. As the work progresses, dikes or mounds shall be constructed along the fill necessary to direct the pipeline discharge longitudinally along the island to avoid transverse gullying directly from the discharge point to the Gulf of Mexico and/or Mississippi Sound and to build the beach to design grade.

b. Longitudinal dikes shall initially be 500 feet long in advance of filling operations. They may need to be lengthened to meet water quality standards. Shorter lengths may be subsequently used if approved by the Contracting Officer. More than one series of longitudinal dikes may be required to meet water quality standards, to build to the required lines and grades, and to keep material within the toe-of-fill. The Contractor will not be held responsible for erosion caused by waves after the fill has been satisfactorily placed and accepted for pay. No undrained pockets shall be left in any fill during or upon completion of the work. The Contractor shall not permit wastewater to flow landward of the fill section or water to pond between the fill and upland. Structures within the fill section shall be protected by the Contractor to prevent damage thereof by the Contractor's operations. Any damages assessed as a result of any of the above items shall be at the Contractor's expense.

### 3.5.2.4 Ramps and Walkways

The Contractor shall provide sand ramp walkways across the beach pipeline at intervals not greater than 500 feet.

### 3.5.3 Placement

a. Prior to placement of satisfactory fill, the Contractor shall remove from the site of the work all snags, concrete rubble, reinforcement bars, and similar debris lying within the foundation limits of the fill section. All materials removed shall be disposed of in areas provided by and at the expense of the Contractor and approved by the Contracting Officer.

THE CONTRACTOR SHALL NOT REMOVE RUBBLE, DEBRIS, OR ANY OTHER OBJECT FROM THE WORK AREA BETWEEN STATIONS 0+00 AND 59+00, EXCEPT TO FULFILL THE REQUIREMENTS OF SUB-PART 3.7, QUALITY CONTROL FOR BEACH AND DUNE FILL, OF THIS SPECIFICATION OR UNLESS IT IS MODERN DAY GARBAGE LYING ON THE BEACH SURFACE WHICH SHALL BE REMOVED BY HAND. IF OBJECTS ARE FOUND WITHIN THE PROJECT FOOTPRINT THAT REQUIRE MECHANICAL REMOVAL PRIOR TO FILL PLACEMENT, THE QAR SHALL BE CONSULTED FOR FURTHER COORDINATION WITH THE ENGINEERING TEAM AS APPROPRIATE.

b. The excavated material shall be placed and brought to rest in the fill template to the lines, grades, and cross section indicated on the drawings, unless otherwise provided for herein or directed by the Contracting Officer. The Contractor shall not stockpile pipe or any other equipment or debris within 5 feet seaward of existing dune vegetation. Pipe shall be placed parallel to shore and landward as far as possible without compromising the dune system.

c. Mechanical operations may be needed to place material to the required lines and grades. Stockpiling, additional longitudinal dikes, and/or other special handling may be needed. It is the Contractor's responsibility to place material to the specified lines and grades within the fill cross section.

d. Any material that is rehandled or moved and placed in its final position by methods other than hydraulic shall be placed in horizontal layers not exceeding three (3) feet in thickness. Compaction of the layers will not be required. The Contractor shall schedule their operations to take advantage of the tide so that filling is done in the dry or as directed.

e. Low Ground Pressure bulldozers, which have a ground - bearing pressure of six (6) pounds per square inch (psi) or less, shall be used to move material between Station 0+00 and 59+00 in advance of articulated wheel loaders that will haul dredge pipe to expand the feature.

f. The Contractor will minimize rutting by varying pipe hauling routes as necessary to avoid compression damage to buried artifacts or other objects of cultural significance.

#### 3.5.3.1 Dressing for Payment

Immediately following placement of the satisfactory fill the Contractor shall grade, level and dress the fill to meet the required elevations and dimensions indicated on the drawings. The dressing for payment shall include the removal of humps, depressions, undrained pockets, excavated material at locations of swales for drainage, etc., prior to final pay survey being taken of an area of Acceptance Section.

#### 3.5.3.2 Dressing for Final Acceptance

Immediately upon the completion of satisfactory fill placement and removal of equipment and materials from the fill area, the final dressing shall be accomplished by the Contractor for final acceptance. The bank caused by wave forces shall be graded down to slope as shown on the drawings. Grade stakes shall be removed intact and any excavation required to remove the stakes shall be backfilled. The contractor is not required to dress the fill below 0 feet NAVD88 to the 1V:20H slopes shown on the Contract Plans.

THE CONTRACTOR SHALL NOT GRADE THE NATURAL BACKSLOPE OF THE 30-INCH LIFT OF FILL MATERIAL BEING PLACED AT THE INTERFACE OF THE NATIVE BEACH AND THE PROJECT TEMPLATE BETWEEN STATIONS 0+00 AND 59+00 AND SHOWN ON SHEET CB-500 OF THE CONTRACT PLANS.

#### 3.5.4 Tolerances

Final grade (F.G.) shall be within tolerances of plus or minus five-tenths (0.5) of a foot of fill grade line. Tolerance shall extend the entire construction template shown on the Plans which includes everything from the upland intersection with natural grade to termination of the seaward berm slope. If material is placed above the upper or below the lower specified tolerance the Contractor shall be required at no cost to the government to perform additional work to achieve the designed alignments, lines, grades,

slopes and dimensions within the specified tolerance. Contractor may stockpile satisfactory fill above the tolerance up-slope of the slough zone, to compensate for material expected to be removed by wave action; but smooth slopes shall be maintained. Berm width will vary as directed by the Contracting Officer. Slope shaping shall be accomplished by grading satisfactory fill into water or as directed by the Contracting Officer.

Grade tolerance in excess of 0.5 ft (6-inches) may be provided at the discretion of the QAR for the curve shown on sheet CB-102 of the Contract Drawings, and having a radius defined by points L, M, and N. Grade tolerance flexibility may be exercised as necessary in this area for the purpose of constructability, so long as the pay volume is approximately equal to that which has been estimated for the template as it is shown on the Contract Drawings.

THE CONTRACTOR IS NOT PERMITTED A MINUS (-) 0.5 FOOT TOLERANCE ALONG THE 30-INCH LIFT OF FILL MATERIAL BEING PLACED AT THE INTERFACE OF THE NATIVE BEACH AND THE PROJECT TEMPLATE BETWEEN STATIONS 0+00 AND 59+00. UNDER NO CIRCUMSTANCES SHALL THERE BE LESS THAN 30 INCHES OF FILL MATERIAL BETWEEN THE NATIVE BEACH (SUB-AERIAL AND SUB-AQUEOUS) AND ALL EQUIPMENT AND MACHINERY NECESSARY FOR PROJECT CONSTRUCTION. VIOLATIONS OF THIS REQUIREMENT SHALL IMMEDIATELY BE REPORTED BY THE COR TO THE KO, Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665 AND THE PROJECT ARCHAEOLOGIST, MR. PATRICK O'DAY.

#### 3.5.5 Misplaced Materials

If any material is deposited other than in places designated or approved, the Contractor may be required to remove such misplaced material and redeposit it where directed at their expense. The Contractors' submittal requirements to provide Notice of Misplaced Material are described in SD-07 Certificates.

#### 3.5.6 Payment

The total amount of work to be paid for will be measured and paid by the cubic yard of in-place material as described in the Explanation of Bid Items and Section 01 00 00, paragraph 1.1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK. The in place fill template shall be surveyed for the particular section of fill between identified start and stop stations and compared to the specified tolerances of the reference fill template. No payment will be made for material placed outside the specified reference fill template. For the purpose of acceptance, the work will be accepted in section lengths of 200 feet of completed satisfactory fill within the specified tolerances of the reference fill template. If material is placed below the specified tolerance, the Contractor shall be required at no cost to the government to perform additional work to achieve the designed alignments, lines, grades, slopes and dimensions within the specified tolerance.

#### 3.6 QUALITY CONTROL

The Contractor shall establish and maintain quality control for operations under this section to assure compliance with contract requirements and maintain records of their quality control for materials, equipment, and construction operations, including but not limited to the following:

### 3.6.1 Preparatory Inspection

Conduct prior to commencing work.

- a. Check location of borrow area, offshore pumpout area, and conditions of areas to be filled.
- b. Discuss plan of action for dredging, transporting, and placing satisfactory fill.
- c. See that all equipment is approved and is in satisfactory working condition.
- d. Check safety requirements and, particularly, public safety.
- e. Check the fill site for structures that could be susceptible to damage or which could have further damage caused by the Contractor's activity.

### 3.6.2 Initial Inspections

Conduct after a representative sample of the work is complete.

- a. Check for proper lines, grades, and elevations.
- b. See that diking and fill discharge is satisfactory.
- c. Check grades and slopes of fill placement.
- d. Check finished area for proper dressing and elimination of undrained pockets and abrupt humps.
- e. Check any adjacent structures to search for damage by Contractor's equipment.

### 3.6.3 Follow-up Inspection

Conduct daily to assure compliance with results of initial inspection.

- a. Check items mentioned in preparatory and initial inspection.
- b. Damage or defects.

A copy of these records, as well as results of corrective action taken, shall be furnished the Government as directed by the Contracting Officer. Submittal of a Project Completion Report shall be required as described in SD-11 Closeout Submittals.

## 3.7 QUALITY CONTROL FOR BEACH AND DUNE FILL

The Contractor shall utilize a quality control program to continuously monitor the dredged material for satisfactory fill to ensure it meets contract requirements. The Contractor shall produce daily reports which characterize the nature of the sediments dredged from the borrow areas and placed within the fill template with specific reference to the "Criteria for Fill Material" paragraph below. At the Preconstruction Conference, the Contractor shall acknowledge the quality of sediment as described in the

following paragraph and the geotechnical boring logs in Appendix A. The Contractor shall develop an "Unacceptable Material Contingency Plan." If directed by the COR, the Contractor shall acquire the equipment and personnel to remediate the fill area.

The material within the borrow area limits is predominately, but not exclusively, light-colored, poorly graded, fine to medium-grain sand-sized quartz (SP). The color, grain-size, fines content, and shell content of the borrow material is approximately as described at sampled locations in logs of borings and other data provided in Appendix A; however, some variation between borings should be expected. Submittal procedures for Quality Control for Fill are described in the requirements listed under SD-04 Samples.

### 3.7.1 Criteria for Satisfactory Fill Material

The satisfactory fill shall be similar to the existing island sediments in color and texture. Satisfactory fill material shall be clean sand from the borrow areas provided in the contract and free of unacceptable materials, such as construction debris, asphalt, rocks greater than 3/4 inch, clay balls, organics, oil, pollutants and any other foreign materials. Any unacceptable material remaining in the fill shall be removed and disposed of by the Contractor as approved by the COR. It is not anticipated that unacceptable material will be encountered in the borrow areas; however, if unacceptable material is discovered within the fill template, the Contractor shall be required to remediate based on the "Unacceptable Material Contingency Plan".

Table 1 is provided to ensure that the sediment from the borrow area is similar at the respective fill placement sites. Due to the natural variability of the fill material, it is recognized that individual samples may deviate from the specified values. If the average of three samples of fill material either taken from the hopper load and/or spatially within the 400 foot sample section falls outside of the limits indicated in Table 1, the Contractor shall notify the COR to determine if relocation of the dredge within the borrow area limits is necessary to minimize further placement of unsatisfactory fill material.

Table 1 - Compliance Criteria Values (inclusive) of Satisfactory Fill Material

Maximum Fines Content (passing #200 sieve)	15 percent
Maximum Fine Gravel Content* (cumulative retained on #4 sieve)	5 percent
Minimum Dry Munsell Color Value	5 Value
D50	0.20-0.40 mm

\*For the purpose of this criteria, gravel content shall be defined as the cumulative percentage by weight of all materials, including SHELL, retained on the #4 sieve and sieves with opening sizes larger than the #4 sieve.

### 3.7.2 Fill Observation and Sampling

Fill observation and sampling shall be performed during construction to ensure that the satisfactory fill material meets criteria. A maximum of approximately 70 samples may be tested.

a. Fill observation shall be performed at all times during which fill material is being placed. The Contractor shall have on-site personnel to visually monitor the material being placed and who can identify obvious changes in sediment quality at the active placement location. A registered geotechnical Engineer, coastal Engineer, or coastal Geologist with a minimum of 3 years experience in dredging operations and visual classification of sediments shall be the lead QC and signatory for all reports produced regarding the satisfactory placed fill. Daily monitoring may be delegated to non-registered inspectors who have experience with dredging operations and visual classification of sediments. The observer shall remain in constant radio contact with the dredge and shall report encounters with unacceptable materials to the dredge operator.

b. The Contractor shall conduct assessments of the sediment as follows: The Contractor shall conduct a visual classification in accordance with ASTM D2488 "Description and Identification of Soils (Visual-Manual Procedure)" of the sediment within each hopper load or scow load, and while it is being placed in the template, to identify obvious disparities with the fill quality specifications. After the fill has been placed in the template, the Contractor shall collect sediment samples, approximately 6-12 inches deep from the surface, along transects spaced every 400 linear feet along the constructed template. Each transect will be perpendicular to the station line of the template. Samples shall be collected between Stations 0+00 through 59+00 and Stations 137+00 through 281+00 at, or near, the locations shown on Sheets CB-106 through CB-109 of the Contract Drawings. Sample locations shall be measured a linear distance landward or seaward of the survey alignment such that any coordinate given may be considered approximate and is being provided for reference only. Questions regarding the location of sample collection shall be coordinated through the QAR prior to the placement of fill material.

For the Phase 3 fill samples as shown on sheet CB-106 of the Contract Plans, the sample(s) shall be taken within 24 hours of fill placement. If the sample is not taken within 24 hours of placement, the archaeological monitor shall be present when the sample is taken to ensure no artifacts from the identified cultural area have been accidentally mixed in with the fill (i.e. if a significant storm event with storm surge overtops the area after the fill is placed but prior to sampling).

Each sample shall be approximately one (1) U.S. Pint and shall be archived with the date, time, elevation (in NAVD88), and horizontal location in the project reference datum, as well as latitude and longitude. The sample shall be visually representative of the majority of fill in that section. The Contractor shall have the sample lab-tested and the lab shall return all unused sample to the Contractor after testing. The Contractor shall store and maintain the samples until project completion.

After project completion, the samples shall be turned over to the Government. Samples shall be in Write-On Whirl-Pak® bags- 18 oz. (532

ml) (Product number B01065) with the sample number, date, and location clearly marked on the bag.

c. The fill material collected for QC testing shall be analyzed for oven-dried Munsell color, grain size distribution, percent visual shell, and calcium carbonate content by a USACE-validated laboratory (a list of validated labs may be found here:  
<https://mtc.erdc.dren.mil/searchvalidation.aspx>).

Each sample shall be oven-dried and shall be assigned full Munsell color notation according to ASTM D1535, listing the hue, value, and chroma. Determination of Munsell notation shall be performed on the oven-dried samples and the "dry" notation shall be reported. The sample shall be split into two subsamples, A and B.

Gradation analysis shall be performed on Subsample A according to ASTM D422 and a USCS classification assigned to it according to ASTM D2487. The nest of sieves shall include U.S. Standard sieve sizes 3/4 inch, 3/8 inch, and numbers 4, 7, 10, 14, 18, 25, 35, 45, 60, 80, 120, 170, 200, and 230. Hydrometer testing is not required; however, the percentage of sample finer than the #200 sieve shall be reported. The fraction of soil retained on the no. 230 sieve shall also be reported.

Visual shell content for Subsample B shall be determined by the following method: After segregation of the subsample during sieving, shell content on each sieve shall be estimated visually down to the smallest sieve that particles can be differentiated using a magnifying glass or microscope. The estimated percentage in each sieve shall be reported. The percentage of shell for each sieve will be multiplied by the weight of the sample retained on that sieve to get the estimated weight of the shell per sieve. Each sieve's shell weight will be added together and divided by the total weight of the subsample. This value will be the percent of visual shell content for the Subsample B and will be reported.

Carbonate content for Subsample B shall be determined using a modified version of the non-ASTM method of determining Insoluble Residues developed by Twenhofel and Tyler in "Methods of Study of Sediments" (1941). A copy of the test method will be provided to the Contractor upon request. Subsample B will be weighed. Unlike the Twenhofel method, the sample will not be crushed down to a No. 10 sieve size prior to the acid bath. Subsample B will be submerged in hydrochloric acid and the calcium carbonate digested from the sample. Upon completion of the digestion, the residue will be washed over a medium to coarse quantitative filter paper using de-ionized (DI) water until the acid is removed. The residue shall be oven-dried and weighed. The difference between the beginning Subsample B dry weight and the remaining residue's dry weight shall be considered the weight of the carbonate in the sample. This weight of carbonate will be divided by the total dry Subsample B weight to determine the percentage of calcium carbonate in subsample B.

A sieve analysis will be conducted on the dry residue from Subsample B. The same method and reporting parameters for the Subsample A sieve analysis will be used for the post-acid digestion Subsample B testing. This will allow for the comparison of gradations between Subsample A (with carbonates) to Subsample B (without carbonates) to determine the distribution of carbonates, by grain size, within the overall sample



and how it affects the grain size statistics for the overall sample.

d. Lab results shall be submitted to the Contracting officer weekly. The Contractor's lab shall prepare grain size distribution curves for Subsamples A and B of each sample and they should be in .pdf format. All sieve data used to generate the grain size distribution curves shall also be submitted in an MS Excel spreadsheet. Data shall include each subsample's weight, weight retained on each sieve, percentage passing each sieve, and the following diameters (in mm) in an Excel spreadsheet: D5, D10, D16, D20, D25, D30, D35, D40, D45, D50, D55, D60, D65, D70, D75, D80, D84, D90, and D95.

The graphic method technique will be used to calculate the mean grain size and standard deviation. See USACE manual EM 1110-2-1810 for explanation of methods.

The dry Munsell color classification (hue, value, chroma) for each sample shall also be included in unique columns within the sieve data spreadsheet.

The percent of visual shell content and weight of estimated shell content for each sieve size will be reported.

Carbonate content weight and percentage will be reported for each Subsample B.

A cumulative report of the laboratory test results described in this Specification shall be submitted weekly. If an acceptance section fails to meet the minimum requirements shown in Table 1 of this specification, then reporting shall also be done in accordance with the requirements of 3.7.2.e.

e. The Contractor shall be in possession of Laboratory Test Results within 60 hours of sample collection. If an average value of the two(2) samples collected along a transect does not comply with the compliance criteria, the Contracting Officer shall be notified immediately (within 24 hours of receiving laboratory results) and the Contractor shall take necessary actions to avoid further discharge of unsatisfactory material with possible remediation. The Contracting Officer will then advise the contractor how to adjust the construction operation at the borrow area to avoid placing additional unsatisfactory material. The Contractor is not required to immediately report non-compliant individual samples if the acceptance section it was sampled from satisfies the compliance criteria.

f. At the conclusion of the project's sampling, contractor shall provide one consolidated Excel file with all laboratory test results previously submitted (including X,Y,Z location data). In addition, all of the grain size distribution curve reports shall be consolidated into a single Adobe PDF file and submitted at the conclusion of the project's sampling.

Submittal requirements for Laboratory Test Results are described in SD-06 Test Reports.

### 3.7.3 Remediation

If the Contracting Officer determines remediation is required, the

Contractor shall remediate. Costs associated with remediation actions shall be included in the unit price bid item for beach fill. The method by which the Contractor remediates shall be of their own design and shall be constructed so as to ensure material placed meets the criteria for acceptability as defined in paragraph 3.7.1, Criteria for Satisfactory Fill Material. Methods of remediation may include, but are not limited to:

a. Blending of unacceptable material (i.e. when exceeding compliance values listed in Table 1 at the indicated fill sites for silt, fine gravel, shell, or Munsell color value) with suitable material to achieve a sand mixture that complies with the criteria of acceptability.

b. Screening unacceptable materials such as rocks greater than 3/4 inch or clay balls from the fill within the area for remediation and depth designated by the Contracting Officer. Screening shall continue until no unacceptable material is encountered or at the Contracting Officer's determination.

c. Removing of screened unacceptable material and disposing of the material, and replacing the material with sand that complies with the acceptable satisfactory fill criteria.

All material to be disposed shall be hauled off site to a disposal area obtained by the Contractor and approved by the COR.

#### 3.7.4 Unacceptable Material Contingency Plan

The Contractor shall be responsible for establishing a contingency plan in the event that unacceptable materials are encountered. The contingency plan shall be submitted to the Government for approval. The contingency plan shall include but is not limited to the following:

a. How the Contractor plans to notify the Contracting Officer if unacceptable materials are encountered.

b. How the Contractor will report encounters with unacceptable material in the daily quality control reports, such as approximate elevation and horizontal position (in project reference datum) where the materials were encountered in the borrow area, as well as the location where material was placed in the fill template.

c. Who will conduct the laboratory analyses and how they will be conducted if requested by the Contracting Officer.

d. If three (3) consecutive fill samples do not comply with the compliance criteria, briefly explain how control measures will be established to adjust dredging and placement operations and avoid further placement of the unacceptable material.

e. If remediation requires blending or screening and removal of unacceptable material, describe how the remediation operations will be accomplished for either case and where material if removed will be placed.

Requirements for the Unacceptable Material Contingency Plan are described in SD-01 Preconstruction Submittals.

### 3.8 INSPECTION

#### 3.8.1 Quality Assurance Representative (QAR)

The QAR shall be notified prior to the establishment of horizontal control work (baseline layout, ranges, station flags, shore-based control for positioning (EPS/RPS, etc.) and vertical control work (tide staff(s), upland cross sections, construction elevations top/invert, maximum/minimum elevations of dredged materials within borrow area(s), etc.), but the presence or absence of the QAR shall not relieve the Contractor of their responsibility for 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 QAR, 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.

b. To furnish, on the request of the Contracting Officer or any QAR, 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 beach placement.

#### 3.8.2 Failure to Comply

In conjunction with the Clause INSPECTION OF CONSTRUCTION of Section 00700 CONTRACT CLAUSES in Volume 1, 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.

FAILURE TO COMPLY WITH SPECIAL CONSTRUCTION REQUIREMENTS RELATED TO ENVIRONMENTALLY SENSITIVE AREAS OR THE TERMS INCLUDED IN APPENDIX E, ARCHAEOLOGICAL MONITORING REQUIREMENTS, SHALL IMMEDIATELY BE REPORTED BY THE CONTRACTOR TO THE KO, Ms. Kathleen Achord, email: Kathleen.A.Achord@usace.army.mil, phone#: 251-441-5665 AND THE PROJECT ARCHAEOLOGIST, MR. PATRICK O'DAY, #251-690-2326.

-- End of Section --