
SPECIFICATIONS

(FOR CONSTRUCTION CONTRACT)

Solicitation No. DACW45-02-B-0021

Habitat Restoration Project

California Bend, NE

September 2002



**US Army Corps
of Engineers**
Omaha District

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**HABITAT RESTORATION PROJECT
CALIFORNIA BEND, NE**

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SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NO. DACW45-02-B-0021	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 04 Sep 2002	PAGE OF PAGES 1 OF 4
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.			

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
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7. ISSUED BY U S ARMY ENGINEER DISTRICT, OMAHA 106 South 15th Street Omaha, Nebraska 68102-1618	CODE CT	8. ADDRESS OFFER TO U.S. Army Corps of Engineers, Omaha Attn: CONTRACTING DIVISION (CENWO-CT) 106 South 15th Street Omaha, Nebraska 68102
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9. FOR INFORMATION CALL:	A. NAME See SECTION 00100, Para. 30	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) See SECTION 00100, Para. 30
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SOLICITATION

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

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

The bidder hereby agrees to do all the work described in these documents entitled:

**Habitat Restoration Project
California Bend, NE**

RETURN WITH BID: SECTIONS 00010 (SF1442) AND 00600 AND BID GUARANTEE

OTHER BONDING INFORMATION: SEE SECTION 00700, CONTRACT CLAUSES CLAUSE "FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS".

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>360</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> 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 0 copies to perform the work required are due at the place specified in Item 8 by 2:00 pm (hour) local time 04 Oct 2002 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee is, is not required.

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

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

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code) DUNS Number : CODE FACILITY CODE	15. TELEPHONE NO. (Include area code) 16. REMITTANCE ADDRESS (Include only if different than Item 14)
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17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within 60 calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS

See Attached Bidding Schedule

Contractor's Fax No. _____ CAGE Code _____
 Contractor's E-Mail address _____

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

19. ACKNOWLEDGMENT OF AMENDMENTS

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

AMENDMENT NO.									
DATE									

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

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
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24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM 26	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()
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26. ADMINISTERED BY CODE	27. PAYMENT WILL BE MADE BY
U.S. Army Engineer District, Omaha 106 South 15th Street Omaha, Nebraska 68102	USAED Omaha c/o USACE Finance Center 5722 Integrity Drive Millington, TN 38054-5005

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 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 commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
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30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31A. NAME OF CONTRACTING OFFICER (Type or print)
30B. SIGNATURE	31B. UNITED STATES OF AMERICA BY
30C. DATE	31C. AWARD DATE

BID SCHEDULE

Basic Schedule

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1.	All plant, material, and labor required for excavation	449,500	c.y.	\$ _____	\$ _____
2.	All plant, material, and labor required for placing quarried stone at inlet structures	9930	ton	\$ _____	\$ _____
3.	All plant, material, and labor required for placing salvaged stone at inlet structures	1895	c.y.	\$ _____	\$ _____
4.	All plant, material, and labor required for removing stone from existing structures	17,920	c.y.	\$ _____	\$ _____
5.	All plant, material, and labor required for clearing pilings above lowered structures	L.S.		---	\$ _____
6.	All plant, material, and labor required for placement of salvaged stone	L.S.		---	\$ _____
7.	All plant, material, and labor required for construction of north access road	L.S.		---	\$ _____
8.	All plant, material, and labor required for 18 inch Culvert	134	l.f.	\$ _____	\$ _____
9.	All plant, material, and labor required for 24 inch Culvert	23	l.f.	\$ _____	\$ _____
10.	All plant, material, and labor required for seeding	L.S.		---	\$ _____
11.	All plant, material, and labor required for All remaining work Except for the Options listed below	L.S.		---	\$ _____

Options

O-1	All plant, material and labor required for resurfacing the north access road (including westside trail)	L.S.			\$ _____
O-2	All plant, material and labor required for construction of the south access road	L.S.			\$ _____

TOTAL AMOUNT (Basic + Options) \$ _____

Notes on Bidding Schedule:

1. Quantities for unit priced items are estimated only and the respective unit price will prevail in the event of an overrun or underrun subject to Contract Requirements Clause "Variation in Estimated Quantities."
2. Although stone removal is based on volume of material, it will not be measured directly. Rather, any significant deviation between the in-place structures and the contract drawings showing profiles, cross sections, and existing channel stabilization structures will be evaluated by the contractor and the Contracting Officer. Such discrepancy would be the basis for modifying the volume on which payment will be made.
3. The lump sum work items for constructing the north and south access roads do not include the culverts, which are separate bid items.
4. A modification to a bid which provides for a single adjustment to the total amount bid, should state the application of the adjustment to each respective lump-sum price and unit price affected. If the modification is not so apportioned, the single adjustment will be applied on a pro rata basis to all items on bid schedule.
5. The category "All remaining work" shall include any activities not listed as pay items, including clearing, grubbing, stripping, tree planting and/or any other items not listed above.
6. See SECTION 00100, INSTRUCTIONS, CONDITIONS, & NOTICES TO BIDDERS for evaluation of options. The Government reserves the right to exercise the options within 120 calendar days after issuance of Notice to Proceed

SECTION 00100

INSTRUCTIONS, CONDITIONS & NOTICES TO BIDDERS
(July 2000, Revised June 2002)

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SECTION 00100

INSTRUCTIONS, CONDITIONS & NOTICES TO BIDDERS

1 GENERAL BIDDING INFORMATION

Bids shall be either mailed or hand-carried as indicated below. Bid will be PUBLICLY opened at the bid time indicated on Standard Form SF 1442 (Page 00010-1).

1.1 MAILED BIDS AND HAND-CARRIED BIDS

Mailed bids shall be addressed to the location as indicated on Standard Form SF 1442 (Page 00010-1), Item No. 8.

Due to heightened security at Government installations, those bidders who have their bids hand-carried* shall contact Neil Herman, Contract Specialist at (402) 221-4119 or (402) 221-4100 prior to delivering to the U. S. Army Corps of Engineer District, Omaha, 106 South 15th Street, Omaha, NE.

On the date specified and for thirty (30) minutes prior to time specified on Standard Form SF 1442, Page 00010-1, item 13.A, a Contracting representative will be in the lobby to receive bids. At the time specified on Standard SF 1442 Page 00010-1, item 13.A, the designated bid opening official will announce that receipt of bids is closed. Official time will be established by time/stamp clock located in the area where bids are received.

Anyone wishing to attend this public opening will be required to present photo identification to sign in and then will be escorted to the facility where bids will be opened. Once bids have been opened, read and recorded, attendees will then be escorted to exit the building.

*This instruction shall also apply to those bids delivered through a delivery or parcel service.

1.2 SOLICITATION RESTRICTIONS

This solicitation is unrestricted and open to both large and small business participation.

1.3 BASIS FOR AWARD.

IT IS INTENDED THAT AWARD WILL BE MADE TO ONE BIDDER FOR THE ENTIRE WORK.

1.4 APPROPRIATION AND AUTHORITY

APPROPRIATION: 96 X 3122 Construction General

AUTHORITY: The work provided for herein is authorized: Section 1135 of the Water Resources Development Act of 1986 as amended.

1.5 DESCRIPTION OF WORK

The scope of this project is to furnish all plant, labor, materials, and equipment and performing all work for excavation of material from river channels and adjacent uplands to create chutes connected to the Missouri River. Work shall be in accordance with plans and specifications issued with this solicitation.

1.6 ESTIMATED CONSTRUCTION COST

The estimated construction cost of this project is between \$2,500,000 and \$5,00,000.

2 (FAR 52.214-6) EXPLANATION TO PROSPECTIVE BIDDERS (APRIL 1984).

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

3 RESERVED

(NOTE: FACSIMILE, ELECTRONIC COMMERCE OR TELEGRAPHIC BIDS ARE NOT AUTHORIZED AND WILL NOT BE ACCEPTED. TELEGRAPHIC MODIFICATIONS OR WITHDRAWAL OF BIDS ARE AUTHORIZED. FACSIMILE MODIFICATIONS OR WITHDRAWAL ARE NOT AUTHORIZED.)

4 (FAR 52.214-5) SUBMISSION OF BIDS (MAR 1997).

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

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

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

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

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

5 (FAR 52.214-18) PREPARATION OF BIDS - CONSTRUCTION (APRIL 1984).

(a) Bids must be--

- (1) Submitted on the forms furnished by the Government or on copies of those forms, and
- (2) **Manually signed.** The person signing a bid must initial each erasure or change appearing on any bid form.

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

- (1) Lump sum bidding;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of subparagraphs (1) through (3) above.

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

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

6 (FAR 52.214-4) FALSE STATEMENTS IN BIDS (APRIL 1984).

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

(NOTE: FACSIMILE, ELECTRONIC COMMERCE OR TELEGRAPHIC BIDS ARE NOT AUTHORIZED AND WILL NOT BE ACCEPTED. TELEGRAPHIC MODIFICATIONS OR WITHDRAWAL OF BIDS ARE AUTHORIZED. FACSIMILE MODIFICATIONS OR WITHDRAWAL ARE NOT AUTHORIZED.)

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

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

designated Government office on the date that bids are due.

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

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

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

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

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

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

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

(End of provision)

8 INFORMATION FOR MODIFYING BIDS.

Bids which have been delivered to the designated bid receiving office may be modified or withdrawn by mail, mailgram, or telegram received at any time before the exact time set for receipt of bids. Modifications or withdrawals sent by mail should be transmitted to the place of bid opening Standard Form SF1442 (Page 00010-1), Item 8. Telephone modifications or withdrawals, other than telecopier, will not be accepted. All bid modifications or withdrawals must be signed by the bidder or its authorized representative. Any questions regarding these procedures should be directed to the Omaha District's Contracting Division at (402) 221-4119. This number should also be used to verify the receipt of messages.

9 BID GUARANTEE.

See Contract Clauses clause FAR 52.228-1, BID GUARANTEE. Bid guarantee MUST be in an original and accompanied by an original power of attorney of the surety.

10 PERFORMANCE AND PAYMENT BONDS.

See Contract Clauses clause FAR 52.228-15, PERFORMANCE AND PAYMENT BONDS. To have the bond considered valid, both the bond and the Power of Attorney must be original. Facsimile copies will not be acceptable, and will render the bid invalid, therefore eliminating it from competition.

(NOTE: FOR THE PURPOSES OF THIS SOLICITATION, THE WORD "ITEM" SHALL BE CONSIDERED TO MEAN "SCHEDULE.")

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

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

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

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

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

12 NORTH AMERICAN CLASSIFICATION SYSTEM (NAICS).

In accordance with NAICS Manual, the work in this solicitation is assigned classification code 234990.

13 SMALL BUSINESS SIZE STANDARD.

This solicitation is not limited to small business concerns, but, for definition purposes, a concern is small if its average annual receipts for its preceding 3 fiscal years did not exceed \$28.5 million. (based on FAR

19.102)

14. (FAR 52.214-3) AMENDMENTS TO INVITATIONS FOR BIDS (DECEMBER 1989).

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids. (FAR 52.214-3.)

15 CHANGES PRIOR TO OPENING BIDS.

The right is reserved, as the interest of the Government may require, to revise the specifications and/or drawings prior to the date set for opening bids. Such revisions will be announced by an amendment or amendments to this Invitation for Bids. It shall be the responsibility of the prospective bidder to obtain copies of amendments from the website listed in paragraph: PLAN HOLDER'S LIST below. The Government may (but not required) send an amendment notification to let prospective bidders know that an amendment has been issued. If the revisions and amendments are of a nature which requires material changes in quantities or prices to be bid, the date set for opening bids may be postponed as necessary, in the opinion of the Commander, to enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for opening bids.

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

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

(End of provision)

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

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

(End of provision)

18 (EFARS 52.214-5000) ARITHMETIC DISCREPANCIES.

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

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

(2) In case of discrepancy between unit price and extended price, the unit price will govern;

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

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

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

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

19 (FAR 52.217-5) EVALUATION OF OPTIONS (JUL 1990).

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

20 OPTIONS.

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

21 AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DESCRIPTIONS.

Specifications, standards, and descriptions cited in this solicitation are available as indicated below:

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

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

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

(b) By submitting a request to the—

Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue

Philadelphia, PA 19111-5094
Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(End of provision)

21.2 CORPS OF ENGINEERS SPECIFICATIONS.

Corps of Engineers specifications of the CRD-C series may be obtained from the National Institute of Building Sciences Construction Criteria Base (CCB) on CD-ROM. Contact the CCB directly at (202) 289-7800 for an order form or obtain an order form at the following internet address:
<http://www.ccb.org/ccbsubscribe/Subsmain.asp>. There is a regular annual subscription fee to CCB of \$700 per year. (Note: This is considered to be the Contractor's responsibility and cost). This will include CCB on CD-ROM or DVD plus unlimited internet access plus access to the new Whole Building Design Guide, now under construction and scheduled for launch in October 2001. Selected Corps of Engineers specifications of CRD-C series are available in Acrobat Reader .pdf file format at the following internet address:
<http://www.wes.army.mil/SL/MTC/handbook/handbook.htm>.

21.3 COMMERCIAL (NON-GOVERNMENT) SPECIFICATIONS, STANDARDS, AND DESCRIPTIONS.

These specifications, standards, and descriptions are not available from Government sources. They may be obtained from the publishers.

22 AVAILABLE PLANT.

Each bidder shall, upon request of the Contracting Officer, furnish a list of the plant available to the bidder and proposed for use on the work.

23 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE.

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of paragraph: EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE, contained in Section: 00800, SPECIAL CONTRACT REQUIREMENTS of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the office listed in paragraph: SITE VISIT (CONSTRUCTION) herein or at the following internet address:
<http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep.htm>.
(copy also included on CD-ROM issued with this solicitation).

24 NOTICE REGARDING BUY AMERICAN ACT.

The Buy American Act (41 U.S.C. 10a-10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal

offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid. All bidders are cautioned that, prior Government conduct notwithstanding, the Contractor's selection of a domestic construction material (as defined in FAR 52.225-5 Buy American Act-Construction Materials) which would require the subsequent selection of a foreign construction material for compatibility is not a justification for waiver of the Buy American Act. It is the Contractor's responsibility to verify, prior to submitting the materials for approval, that each system can be built to meet the contract specifications without the use of foreign construction materials.

25 NEBRASKA SALES AND USE TAX.

Materials installed under this contract are not exempt and the tax must be included in the amount bid. Telephone: (402) 595-2065 (Department of Revenue-Omaha).

26 (FAR 52.236-27) SITE VISIT (CONSTRUCTION) (FEB 1995).

- (a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.
- (b) Contractors interested in inspecting the site of the proposed work should contact Larry Gann, Area Engineer's Office, Fort Crook Area, U.S. Army Corps of Engineers, P.O. Box 13287, Bldg. 525, Offutt AFB, Omaha, Nebraska 68113, Telephone 402-293-2564

27 BIDDER'S QUESTIONS AND COMMENTS.

Questions and/or comments relative to these bidding documents should be submitted via e-mail or mailed to the address identified in paragraph: AVAILABILITY OF BID RESULTS below. Comments should reach this office no later than 20 calendar days prior to the date set for opening of bids, if feasible, in order that changes, if needed, may be added by amendment. E-mail addresses, FAX numbers, items for question and points of contact are listed below. Phone calls with questions should be made between 8:30 a.m. and 3:30 p.m. (Central Standard Time) Monday through Friday.

Note: A courtesy copy of all questions shall be sent to the Contract Specialist (Contractual Matters Point of Contact), the Program Manager and Specifications Section (Technical Content Points of Contact).

<u>Items for Question</u>	<u>Points of Contact/ Phone numbers/ FAX Numbers</u>	<u>E-mail Addresses</u>
Contractual Matters: Ordering CD-Rom of the plans and specifications (limit One per firm)/ amendments**/ Bid Results (See Paragraph AVAILABILITY OF BID RESULTS, below)/ Receipt of Bids	Neil Herman 402-221-4411 (phone) 402-221-4199 (Fax)	Neil.F.Herman@usace.army.mil
Planholder's List	See paragraph: PLAN HOLDER'S LIST, below.	
Small Business Matters	Hubert Carter 402-221-4110 (phone)	hubert.j.carter@usace.army.mil
Technical Contents Of Plans and Specification	Jerry Tworek 402-221-3111 (phone) Or Specifications Section Marylee Stobbe 402-221-4411 (Phone) 402-221-3842 (Fax)	Marylee.F.Stobbe@usace.army.mil
Site Inspection	See Paragraph: SITE VISIT (CONSTRUCTION), above	

**** - The Government may elect to send a notification that an amendment has been posted to the Government's web address. It shall be the Contractor's, Subcontractor's and Supplier's responsibility to check the Government's web address for amendments.**

27.1 PLAN HOLDER'S LIST.

The CD-Rom will provide a list of plan holders that have registered at the time the CD-Rom was created. It is bidder's responsibility to check for any updates to the plan holder's list, which is available at the following web address:

<http://ebs-nwo.wes.army.mil/>

27.2 AVAILABILITY OF BID RESULTS (Local Clause/Provision)

Bid results will be available after bid opening on the Government's web address:

<http://ebs-nwo.wes.army.mil/>. Official bid abstracts will be available and may be requested by sending a self-addressed stamped envelope to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO-CT-C(Neil Herman), 106 South 15th Street, Omaha, NE 68102-1618.

28 (FAR 52.233-2) SERVICE OF PROTEST (AUG 1996).

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgement of receipt from District Counsel, 106 South 15th Street, Omaha, Nebraska 68102-1618.

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

29 PRE-AWARD SURVEY INFORMATION (Local Provision) (Sep 93)

In accordance with Paragraph PERFORMANCE AND PAYMENT BONDS, request that the following information be submitted with your bid. This facilitates the award process.

1. Financial
 - Name, address, and fax number of Financial Institution
 - Name and phone number of finance individual (primary and alternate) to be contacted for information
 2. Bonding Information
 - Provide the name, address, regular phone number and fax number of your Surety Company.
 3. Performance
 - Provide three (3) references to be contacted on your company's performance
- The following information should be submitted:
- Name and Fax number of Owner/User
 - Project Name, Location, Contract Number, and dollar value
 - Name and phone number of individuals (primary and alternate) that can verify performance of the project

30 (FAR 52.204-6) DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUNE 1999)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in

the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

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

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

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

(End of provision)

31 (FAR 52.216-1) TYPE OF CONTRACT (APR 1984) .

The Government contemplates award of a Firm Fixed Price contract resulting from this solicitation.

32 SUBCONTRACTING PLAN/SUBCONTRACTING GOALS REGARDING THE UTILIZATION OF SMALL BUSINESS CONCERNS .

a. Application. This clause applies only to large business concerns submitting bids for services exceeding \$500,000 or for construction exceeding \$1,000,000.

b. Federal Acquisition Regulations (FAR). Attention is directed to the following FAR provisions contained in this solicitation:

52.219-8, Utilization of Small Business Concerns (Alternate I)

52.219-9, Small Business Subcontracting Plan (Alternate I)

52.219-16, Liquidated Damages - Small Business Subcontracting Plan

52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises

c. Goals. The U.S. Army Corps of Engineers considers the following goals reasonable and achievable for fiscal year 2002 and for the performance of the resultant contract:

(1) 61.4% of planned subcontracting dollars with small business concerns.

(2) 9.1% of planned subcontracting dollars with those small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) 5.0% of planned subcontracting dollars with those small business concerns owned and controlled by women.

(4) 3.0% of planned subcontracting dollars with those small business concerns owned and controlled by Service-Disabled Veterans.

(5) 2.5% of planned subcontracting dollars with those small business concerns owned and controlled by HubZones.

d. Submission and Review of Subcontracting Plan.

SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN IS NOT APPLICABLE TO SMALL BUSINESSES.

(1) The apparent low bidder must submit a subcontracting plan within five (5) calendar days after bid opening (a longer period maybe granted by the Contracting Officer upon request) within 24 hours after notification by the Government to the Contracting Activity.

(2) Goals included in the subcontracting plan should be at least equal to those indicated above. If lesser goals are proposed, the bidder may be required to substantiate how the proposed plan represents the bidder's best effort to comply with the terms and conditions of the solicitation. Bidders are highly encouraged to become familiar with the intent of the solicitation provisions and the elements of the subcontracting plan.

(3) The subcontracting plan must contain, as a minimum, the elements set forth in FAR provision 52.219-9. An example subcontracting plan will be furnished to the apparent low bidder (upon request). The example subcontracting plan (if requested) should not be construed as an acceptable subcontracting plan. Any format will be acceptable provided that the plan addresses each element as required by the Federal Acquisition Regulations and its supplements.

(4) Proposed plans will be reviewed by the Government to ensure the plan represents the firm's best efforts to maximize subcontracting

opportunities for small, small disadvantaged and women-owned businesses.

(5) Subcontracting plans are required to be approved prior to Contract Award. The approved subcontracting plan (to include goals) will become a material part of the contract.

e. Failing to Submit An Acceptable Subcontracting Plan. An apparent low bidder failing to submit a subcontracting plan which demonstrates a reasonable effort to meet the goals listed above or provide an explanation why lesser goals are proposed (upon request), will be considered as non-responsive and not considered eligible for award of the contract.

f. Questions or Assistance Needed in Developing Subcontracting Plan. For any questions or assistance needed in developing the subcontracting plan, contact the Contract Specialist or District's Deputing for Small Business (See paragraph: BIDDER QUESTIONS AND COMMENTS, Contract Specialist [Bid Results] or the District's Deputy for Small Business [Small Business] or fax your inquiries to 402-221-4199).

33 (DFARS 252.204-7004) REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)

(a) Definitions.

As used in this clause--

(1) "Central Contractor Registration (CCR database" means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) "Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) "Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) "Registered in the CCR database" means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its

DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.

(End of clause)

REQUIRED CENTRAL CONTRACTOR REGISTRATION (CCR)

Register Now: Don't wait until you submit an offer on a solicitation. You must be registered to receive the contract award. It can often take 30 days for CCR to process your registration information.

Register One of Three Ways:

Internet: <http://www.ccr.gov>

Value Added Network (VAN) for EDI users:

Contact your VAN for information. If you need to find a VAN look at

http://www.acq.osd.mil/ec/ecip/van_list.htm

FAX or Mail: Call (888)227-2423 or (616)961-4725 to receive a registration package. FAX or mail the completed information to the CCR Assistance Center. It can take up to 30 days to process a faxed or mailed package.

CCR Assistance Center

74 Washington Street North, Suite 7

Battle Creek, MI 49017-3084

FAX: (616)961-7243

SECTION 00600
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS

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SECTION 00600
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS

The bidder (offeror) makes the following certification and representations as a part of the bid, shall check the appropriate boxes, fill in the appropriate information, and provide signatures on the attached "Solicitation Form" (00600) pages, and submit with Standard Form 1442 (Section 00010).

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

(a) The offeror certifies that -

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

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

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

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

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

(2)(i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

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

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

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

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

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

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

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

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

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

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

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

3. (FAR 52.204-3) TAXPAYER IDENTIFICATION (OCT 1998).

(a) Definitions.

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

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

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

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

(d) Taxpayer Identification Number (TIN).

TIN: _____.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other _____.

(f) Common parent.

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

Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

4. (FAR 52.204-5) WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS)
[MAY 1999]

(a) *Definition.* Women-owned business concern, as used in this provision, means a concern that is

at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

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

(End of provision)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject

to Prosecution Under Section 1001, Title 18, United States Code.

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

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

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

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

7. (DFARS 252.209-7001) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT THAT SUPPORTS TERRORISM (MAR 1998). [For Contracts exceeding \$100,000]

(a) Definitions.

As used in this provision-

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

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

(3) "Significant interest" means-

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

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

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

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

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

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

(c) Disclosure.

The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include--

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each Government.

(End of provision)

8. (FAR 52.211-6) BRAND NAME OR EQUAL (AUG 1999).

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must--

(1) Meet the salient physical, functional, and other characteristics specified in the solicitation;

(2) Clearly identify the item by--

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or securing any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.

9. RESERVED

10. RESERVED

**11. (FAR 52.219-1) SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)
ALTERNATE I (APR 2002)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [insert NAICS code].

(2) The small business size standard is _____ [insert size standard].

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

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

business concern.

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

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

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

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

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

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

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

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.]

The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

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

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

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

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

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

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

(1) Means a small business concern—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

the Act.

(End of provision)

12. (FAR 52.219-2) EQUAL LOW BIDS (OCT 1995)

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

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

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

13. RESERVED

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

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

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

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

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

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

15. (FARS 52.219-21) SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (MAY 1999).

[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

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

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

16. (FAR 52.222-21)

CERTIFICATION OF NONSEGREGATED FACILITIES (FEB 1999)

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

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

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

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

The offeror represents that—

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

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

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

18. (FAR 52.223-4) RECOVERED MATERIAL CERTIFICATION (OCT 1997)

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

19. (FAR 52.223-13) CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000) [For Contracts over \$100,000]

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

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

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

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

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

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

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

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

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

20. (DFARS 252.225-7031) SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

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

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification.

By submitting this offer, the Offeror, if a foreign person, company, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

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

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

(b) REPRESENTATION. The Offeror represents that it-

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

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

SECTION 00700

CONTRACT CLAUSES

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119. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)
120. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) (ALTERNATE I) (APR 1984)
121. *FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984) [For Contracts \$100,000 or Less]
122. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) ALTERNATE I (SEP 1996) [For Contracts Over \$100,000]
123. *FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)
124. ENVIRONMENTAL LITIGATION (1974 NOV OCE)
125. DFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS
126. INAPPLICABLE PROVISIONS AND CLAUSES (Local Provision). [Applicable only for projects or delivery orders less than \$100,000]

SECTION 00700

CONTRACT CLAUSES

1. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far>

(End of clause)

* - CONTRACT CLAUSES THAT MAY BE INCORPORATED BY REFERENCE

2. DFARS 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)

3. *FAR 52.202-1 DEFINITIONS (DEC 2001) ALTERNATE I (MAY 2001)

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

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

(c) "Commercial item" means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or

change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

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

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

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

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

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

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

(f) “Nondevelopmental item” means—

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

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

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

(End of clause)

4. *FAR 52.203-3 GRATUITIES (APR 1984)

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

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

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

- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled--
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

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

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

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

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

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

6. *FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

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

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

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

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

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

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a

subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

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

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

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

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

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged

by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

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

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

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

(4) The Contracting Officer may

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

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of 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 \$100,000.

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

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

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

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

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

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

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

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

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

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

8. DFARS 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE—CONTRACT-RELATED FELONIES (MARCH 1999)

- (a) Definitions.
As used in this clause--
- (1) "Arising out of a contract with the "DoD" means any any act in connection with--
 - (i) Attempting to obtain;
 - (ii) Obtaining; or
 - (iii) Performing a contract or first-tier subcontract of any 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 judgement was entered against the individual.
- (b) Any individual who is convicted after September 29, 1988 of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--
- (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
 - (2) On board of directors of any DoD Contractor or first-tier subcontractor;
 - (3) As a consultant to any DoD Contractor or first-tier subcontractor; or
 - (4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.
- (c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than five years from the date of conviction.
- (d) 10 U.S.C. 2408 provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--
- (1) Employing a person under a prohibition in paragraph (b) of this clause;
 - (2) Allowing such a person to serve on the board of directors of 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 has been convicted of fraud or any other felony arising out of a contract with the DoD by contracting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

9. DFARS 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991) (For Military Contracts Exceeding \$5,000,000)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. *FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

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

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

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

(3) A special Government employee, as defined in section 202, title 18, United States Code.

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

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

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

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

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

(b) Prohibitions.

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

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

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

(i) Agency and legislative liaison by own employees.

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

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

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

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

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

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

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

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

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

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

(ii) Professional and technical services.

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

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

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

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or

negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

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

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

(iii) Disclosure.

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

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

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

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

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

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

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

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

(v) Penalties.

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

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

(vi) 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.

12. *FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

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

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

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

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

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

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

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

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

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

(End of clause)

13. DFARS 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.

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

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

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

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

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

15. DFARS 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

16. *FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990) [For Military Contract's Only]

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

17. FAR 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

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

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

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

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

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

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in 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 cost or pricing data.

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

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to any 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 cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

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

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

- (c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which
- (1) the actual subcontract or
 - (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (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 cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if--
- (A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

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

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

(2) Be limited to such modifications.

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

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

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

(End of clause)

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

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

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

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

(ii) Otherwise successful offers from small business concerns;

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

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

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

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

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

[] Offeror elects to waive the evaluation preference.

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

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

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

small business concerns;

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

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

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

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

(End of clause)

22. *FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

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

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

(c) *Definitions.* As used in this contract—

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

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

(1) Means a small business concern—

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

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

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

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

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

23. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) [When Contracting By Negotiations]

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

(b) *Definitions.* As used in this clause—

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

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

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

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

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

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, 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 the subcontracting plan shall make the offeror ineligible for award of a contract.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may

include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

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

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

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

(iv) Total dollars planned to be subcontracted to 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;

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; 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 \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

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

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

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

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

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

(i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-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 \$100,000, indicating—

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

why not;

(C) Whether 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, and women-owned small business sources; and

(D) Veterans service organizations.

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

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

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

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

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

(1) Assist small business, veteran-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) 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.

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

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

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

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

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

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

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

(End of clause)

24. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) --ALTERNATE I (OCT 2001) [When Contracting By Sealed Bidding]

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

(b) *Definitions*. As used in this clause—

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

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

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

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

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

(c) The 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 contract 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.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

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

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

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

(iv) Total dollars planned to be subcontracted to 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; 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, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor

Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRONet as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

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

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; 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 \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

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

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

(i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-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 \$100,000, indicating—

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

why not;

solicited and, if not, why not;

not;

why not;

why not; and

(C) Whether service-disabled veteran-owned small business concerns were

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

(E) Whether small disadvantaged business concerns were solicited and, if not,

(F) Whether women-owned small business concerns were solicited and, if not,

(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, and women-owned small business sources; and

(D) Veterans service organizations.

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

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

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

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

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

(1) Assist small business, veteran-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) 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.

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

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

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

supplying a commercial item.

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

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

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

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

(End of clause)

25. DFARS 252.219-7009 SECTION 8(a) DIRECT AWARD (MAR 2002) [When Competitive 8(a) Contracting Procedures are used]

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

[To be completed by the Contracting Officer at the time of award]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The 8(a) Contractor agrees that--

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of

ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

26. *FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996) [For Small Business Set Aside Only]

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--
 - (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

27. *FAR 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 a commercial plan.

- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from many final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

28. DFARS 252.219-7010 ALTERNATE A (JUN 1998) [When Competitive 8(a) Contracting Procedures are used]

As prescribed in 219.811-3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

29. FAR 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUNE 1999) [When Competitive 8(a) Contracting Procedures are used]

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) (1) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.

(2) The [insert name of SBA's contractor] will notify the U.S. Army Corps of Engineers Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

30. DFARS 252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial products subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

31. DFARS 252.219-7004 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JUN 1997)

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

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Publ. L. 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except--

(1) One copy of SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative--

(1) Small business, small disadvantaged business and women-owned small business goals; and

(2) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

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

32. *FAR 52.222-3 CONVICT LABOR (AUG 1996)

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

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

33. *FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (SEPT 2000)

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

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

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

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

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

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this

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

34. *FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

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

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

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

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

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

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

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

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

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

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

35. *FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

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

36. *FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate,

either directly or indirectly, and that no deductions have been made either directly or indirectly, 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.

37. *FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will not longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater

than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

38. *FAR 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.

39. *FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

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

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

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

40. *FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

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

41. *FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

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

42. *FAR 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 of their representatives.

43. *FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

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

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

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

44. *FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)

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

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

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

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

45. *FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions.

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

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

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

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

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

- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

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

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

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

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

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

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

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

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

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

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman

sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

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

(6) Disseminate the Contractor's equal employment policy by--
(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
(ii) Including the policy in any policy manual and in collective bargaining agreements;
(iii) Publicizing the policy in the company newspaper, annual report, etc.;
(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

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

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

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

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

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

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

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

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

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

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

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

- (1) Actively participates in the group;
- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

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

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

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

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

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

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

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

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

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

(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).

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

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

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

“Executive and top management” means any employee—

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

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

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

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

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

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

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

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

“Special disabled veteran” means—

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

(i) Rated at 30 percent or more; or

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

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

“Veteran of the Vietnam era” means a person who—

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

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

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

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

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

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

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

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

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

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

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

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

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

the Contractor;

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

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

and

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

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

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

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

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

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

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

(2) The employment notices shall—

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

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

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

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

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

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

noncompliance.
(End of clause)

47. *FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General.

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

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or other forms of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

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

(b) Postings.

- (1) The Contractor agrees to post employment notices stating--
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

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

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

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report)”.

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

49. *FAR 52.222-38 COMPLIANCE WITH VETERANS’ EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

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

(End of provision)

50. *FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998) [For Work on Federal Facilities]

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

51. *FAR 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 23.560, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

52. FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000) [For Contracts exceeding \$100,000. EPA Designated product (available at <http://www.epa.gov/cpg/>)]

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to the Contracting Officer.

(End of clause)

53. *FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000) [For Contracts Over \$100,000]

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility use in the performance of this contract is exempt from the requirement to file an annual Form R if--

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

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

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

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

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

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

(1) The Contractor shall notify the Contracting Officer;

and

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

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

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

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

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

54. RESERVED

55. DFARS 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

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

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD

regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

56. *FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAY 2002) (For Contracts less than \$6.806 million)

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

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

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

“Cost of components” means—

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

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

“Domestic construction material” means—

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

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

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

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

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

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

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

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

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

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

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to

use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction

materials cited in accordance with paragraph (b)(3) of this clause.

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

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

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

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

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

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material			
Domestic construction material	_____	_____	_____
Item 2:			
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).]

57. *FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (MAY 2002) (Applicable with FAR 52.225-9)

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

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the

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

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

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

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

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

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

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

58. *FAR 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JULY 2002) [For Contracts more than \$6,806,000] ALTERNATE I (MAY 2002) [For Contracts between \$6.806 and 7.068419 Million]

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

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

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

“Cost of components” means—

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

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

“Designated country” means any of the following countries:

Aruba	Kiribati
Austria	Korea, Republic of

Bangladesh	Lesotho
Belgium	Liechtenstein
Benin	Luxembourg
Bhutan	Malawi
Botswana	Maldives
Burkina Faso	Mali
Burundi	Mozambique
Canada	Nepal
Cape Verde	Netherlands
Central African Republic	Niger
Chad	Norway
Comoros	Portugal
Denmark	Rwanda
Djibouti	Sao Tome and Principe
Equatorial Guinea	Sierra Leone
Finland	Singapore
France	Somalia
Gambia	Spain
Germany	Sweden
Greece	Switzerland
Guinea	Tanzania U.R.
Guinea-Bissau	Togo
Haiti	Tuvalu
Hong Kong	Uganda
Iceland	United Kingdom
Ireland	Vanuatu
Israel	Western Samoa
Italy	Yemen
Japan	

“Designated country construction material” means a construction material that—

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

“Domestic construction material” means—

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

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

“North American Free Trade Agreement country” means Canada or Mexico.

“North American Free Trade Agreement country construction material” means a construction material that—

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

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by

providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and NAFTA country construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

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

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

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

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

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

(H) A detailed justification of the reason for use of foreign construction

materials cited in accordance with paragraph (b)(3) of this clause.

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material			
Domestic construction material	_____	_____	_____
Item 2:			
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)

Alternate I (May 2002). As prescribed in 25.1102(c)(3), delete the definitions of “North American Free Trade Agreement country” and “North American Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act 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.

59. *FAR 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2002) [Applicable with FAR 52.225-11] ALTERNATE II (MAY 2002) [For Contracts Between 6.806 and 7.068419 Million]

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

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

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

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic,

designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

ALTERNATE II (MAY 2002) [For Contracts between 6.806 and 7.068419 Million]

As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

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

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

60. *FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

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

(End of clause)

61. *FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 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)

62. *FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent

(1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or

(2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with

(i) specifications or written provisions forming a part of this contract or

(ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold) however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

63. *FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

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

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

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

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

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

65. DFARS 252.227-7033

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail

(i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

66. FAR 52.228-1

BID GUARANTEE (SEP 1996) [NOTE: Not required for projects less than

\$100,000]

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

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

(c) The amount of the bid guarantee shall be twenty (20%) of the bid price or Three Million Dollars (\$3,000,000), whichever is less.

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

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

67. *FAR 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.

68. *FAR 52.228-5

INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) [For

Contracts Exceeding \$100,000

(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.

69. *FAR 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

- (1) Pledge of assets; and
- (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

70. *FAR 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Public Law 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

71. FAR 52.228-13 ALTERNATIVE PAYMENT PROTECTIONS (JULY 2000) [Applicable only for projects or delivery orders less than \$100,000]

- (a) The Contractor shall submit one of the following payment protections:
 - (1) A payment bond.
 - (2) An irrevocable letter of credit from a federally insured financial institution.
- (b) The amount of the payment protection shall be 100 percent of the contract price.
- (c) The submission of the payment protection is required within 10 days of contract award.
- (d) The payment protection shall provide protection for the full contract performance period plus a one-year period.
- (e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.
- (f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

72. FAR 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

- (a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.
- (b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.
- (c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--
 - (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;
 - (2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or 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 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 of least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:
 - (i) For contracts subject to the Miller Act, the later of--
 - (A) One year following the expected date of final payment;
 - (B) For performance bonds only, until completion of any warranty period; or
 - (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
 - (ii) For contracts not subject to the Miller Act, the later of--
 - (A) 90 days following final payment; or
 - (B) For performance bonds only, until completion of any warranty period.
- (d) Only federally insured financial institution rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the

ILC had letter of credit business of 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.

(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 transferee's sight draft(s) drawn on issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]---

(Date) _____

Our Letter of Credit

Advice Number-----

Beneficiary:-----

[U.S. Government agency]

Issuing Financial Institution:-----

Issuing Financial Institution's LC No.:-----

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:
SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of-----

[Beneficiary Agency] _____

the sum of United States \$ _____

This draft is drawn under-----

Irrevocable Letter of Credit No.-----

[Beneficiary Agency]

By: _____

73. FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS (JULY 2000).

[This provision is Not Required for projects less than \$100,000. See Clauses "Alternate Payment Protections" and "Inapplicable Provisions and Clauses".]

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

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier’s check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

74. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991) [For Contracts Exceeding \$100,000]

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

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

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is

required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

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

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

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

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

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

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

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

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

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

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

76. DFARS 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 DoD FAR Supplement, in effect on the date of this contract.

77. *FAR 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

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

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

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

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

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

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

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

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

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

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

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

(c) Contractor Certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.) I hereby certify, to the best of my knowledge and belief, that--

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

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

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

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

(Name)

(Title)

(Date)

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

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

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

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

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

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

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

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

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

(h) Final Payment. The Government shall pay the amount due the Contractor under this contract after--
(1) Completion and acceptance of all work;
(2) Presentation of a properly executed voucher; and
(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation Because of Undefined Work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefined 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.

78. RESERVED.

79. *FAR 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:
(1) The date fixed under this contract.
(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

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

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

81. *FAR 52.232-27 PROMPT PAY FOR CONSTRUCTION CONTRACTS (FEB 2002)

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

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

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

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

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

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

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

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

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

(B) If the designated billing office fails to annotate the invoice with the date of

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

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

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

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

(iv) Description of work or services performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance

with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

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

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

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

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

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

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

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

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

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

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

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41

U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government;

or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment,

specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on

the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this

clause.

(f) *Third-party deficiency reports*—(1) *Withholding from subcontractor*. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor’s performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

- (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
- (ii) Withhold from the first-tier subcontractor’s next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge*. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

- (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
- (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding*. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the

amounts withheld.

(h) *Subcontractor payment entitlement*. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes*. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights*. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty*. The Contractor’s obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) *Overpayments*. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

82. *FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER –CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

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

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor’s EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

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

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor’s EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor’s EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of

paragraph (d) of this clause.

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

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.
(End of Clause)

83. DFARS 252.232-7004 DOD PROGRESS PAYMENT RATES (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.
(End of clause)

**84. DFARS 252.232-7005 REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--
DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)**

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided-

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.
(End of clause)

85. *FAR 52.233-1 DISPUTES (JULY 2002)

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

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

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

'I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.'

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified if required), or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

86. *FAR 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.

87. RESERVED

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

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required, provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

89. *FAR 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.

90. *FAR 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.

91. RESERVED

92. *FAR 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 work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

93. FAR 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.

94. *FAR 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.

95. *FAR 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 refused to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

96. *FAR 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.

97. *FAR 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.

98. *FAR 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.

99. *FAR 52.236-13 ACCIDENT PREVENTION-ALTERNATE I (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request

immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontractors.

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

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

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

100.*FAR 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

101.FAR 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.

102.*FAR 52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

103.FAR 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.

104. *FAR 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.

105. DFARS 252.236-7000 MODIFICATION OF 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

(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.

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

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

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

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

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

107. *FAR 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.

108. *FAR 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.

109. FAR 52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

- (1) receipt of a written change order under paragraph (a) of this clause or
- (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the

Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period

is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

110. DFARS 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.

111. DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation; and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to---

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

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

112. *FAR 52.244-2 SUBCONTRACTS (AUG 1998)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent of subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract," means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the the prime contract or a subcontract. It includes, but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modification or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the the simplified threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting--
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the acceptability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement by the Government.

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

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which ere evaluated during negotiations:

(End of clause)

113. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)

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

"Commercial item" has the meaning contained in the clause at 52.202-1, 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) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(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)

114. *FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989) [For Government Property over \$100,000]

(a) Government-furnished property.

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

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

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

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

(b) Changes in Government-furnished property.

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

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

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

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

(c) Title in Government property.

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

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

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract

commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

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

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

(ii) Title to all other material shall pass to and vest in the Government upon--
(A) Issuance of the material for use in contract performance;
(B) Commencement of processing of the material or its use in contract performance; or

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

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

(e) Property Administration.

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

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

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

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

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

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

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

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

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

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

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

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

- (j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government--
- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**115. *FAR 52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)
[For Government Property \$100,000 or Less]**

- (a) The Government shall delivery to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changed clause when--
- (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.
- (c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except--
- (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this contract; or
 - (3) As otherwise provided for by the provisions of this contract.
- (d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.
- (e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

116. *FAR 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) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, 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.

117. *FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice;

- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

- (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

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

(a) Definitions.

As used in this clause--

- (1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

- (2) "Department of Defense" (DOD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

- (3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

- (4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

- (5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime Contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

- (6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

- (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

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

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel 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 other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number, and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

- (f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--
- (1) No ocean transportation was used in the performance of this contract;
 - (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
 - (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
 - (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format;

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
---------------------	------------------------	----------

TOTAL

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

- (h) The Contractor shall include this clause, including this paragraph (h) in all subcontracts under this contract that-
- (1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and
 - (2) Are for a type of supplies described in paragraph (b) (2) of this clause.

119. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor--

- (1) Shall notify the Contracting Officer of that fact; and
- (2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) (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 vessel 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.

120. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) (ALERNATE I (APR 1984))

(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) of this clause.

(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) of this clause).

"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 paragraphs (c) (1) through (7) of this clause. 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) of this clause.
- (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 applied 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) Deleted.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor'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)

121. *FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984) [For Contracts \$100,000 or Less]

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

122. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) ALTERNATE I (SEP 1996) [For Contracts Over \$100,000]

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
 - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b) (6) of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1 year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) 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 amended, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of the termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

123. *FAR 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.

124. ENVIRONMENTAL LITIGATION (1974 NOV OCE)

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

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

125. EFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

126. INAPPLICABLE PROVISIONS AND CLAUSES (Local Provision). [Applicable only for projects or delivery orders less than \$100,000]

This provision applies only to delivery orders and projects less than \$100,000.

Pursuant to Pub. L. 103-355, the following provisions and clauses, as noted below, are inapplicable to this contract:

(a) FAR 28.102-3, Miller Act requirements;

(b) Not Used;

- (c) FAR 52.203-5, Covenant Against Contingent Fees;
- (d) FAR 52.203-6, Restrictions on Subcontractor Sales to the Government;
- (e) FAR 52.203-7, Anti-Kickback Procedures;
- (f) FAR 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation; and
- (g) FAR 52.223-6, Drug-Free Workplace, except for individuals.

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SECTION 00800

SPECIAL CONTRACT REQUIREMENTS
5/00, Rev 7/02

PART 1 GENERAL

Attachments:

General Wage Decision No. NE020001
Contractor Distribution List

1.1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall commence work under this contract within ten (10) calendar days after the date of receipt by him of Notice to Proceed, prosecute said work diligently, and complete the entire work except seeding ready for use not later than 360 calendar days after receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises. (FAR 52.211-10)

1.1.1 Start Work

Evidence that the Contractor has started procurement of materials, preparation and submission of shop drawings, preparation of subcontracts, and other preparatory work will satisfy the requirement that work commence within ten (10) calendar days after receipt of Notice to Proceed. Therefore, work need not be commenced at the construction site within ten (10) calendar days.

1.2 LIQUIDATED DAMAGES-CONSTRUCTION (SEPT 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 \$1225 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. (FAR 52.211-12)

1.3 EXCEPTION TO COMPLETION TIME AND LIQUIDATED DAMAGES

In case the Contracting Officer determines that seeding, and/or the specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion time and liquidated damages . This work shall be accomplished during the first seeding, period and the specified maintenance period following the completion date.

1.4 CONTRACT DRAWINGS AND SPECIFICATIONS

1.4.1 SETS FURNISHED

The contractor shall be responsible for making copies of specifications including amendments. The bid drawings as amended shall be utilized in the

performance of the work until contract drawings (i.e., bid drawings that have been posted with all amendment changes) are mailed to the Contractor. See Section 01040 As-Built Drawings for drawings being furnished to the Contractor. The work shall conform to the contract drawings, set out in the drawing index, all of which form a part of these specifications. The work shall also conform to the standard details bound or referenced herein.

1.4.2 DRAWING REPRODUCTION AND DISTRIBUTION

The contractor shall reproduce multiple hard copy sets of contract drawings from government provided CD-ROM containing read-only cal file drawings. Within 21 calendar days from receipt of CD-ROM, contractor shall forward reproduced documents to addresses contained in the Contractor Distribution List for the Project, see attachments to this specification. No progress payments will be processed prior to receipt of the contract drawings by the Area Office. After receipt of documents, the Area Office shall provide the contractor with a CD-ROM containing edit able CAD file drawings. The contractor shall edit CD-ROM containing CAD files drawings to prepare as-built drawings.

1.4.3 NOTIFICATION OF DISCREPANCIES

The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Dimensions marked on drawings shall be followed in lieu of scale measurements. Enlarged plans and details shall govern where the same work is shown at smaller scales. All scales shown are based on a standard drawing size of 28" x 40". If any other size drawings are furnished or plotted the contractor shall adjust the scales accordingly. The contractor shall also advise his sub-contractors of the above. 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.

1.4.4 OMISSIONS

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.

1.5 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractors' information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

a. The indications of physical conditions on the drawings and in the specifications are the result of site investigations by surveys auger borings . The data shown graphically and by symbol for each respective boring represents the actual geologic features observed and logged at the location given on the drawings. While the borings are representative of subsurface conditions at their respective locations and for their respective vertical reaches, local minor variations characteristic of the subsurface materials of this region could occur.

b. Weather conditions shall have been investigated by the

Contractor to satisfy himself as to the hazards likely to arise therefrom. Complete weather records and reports may be obtained from the local U.S. Weather Bureau.

c. Transportation facilities shall have been investigated by the Contractor to satisfy himself as to the existence of access highways and railroad facilities. (FAR 52.236-4)

1.6 PAYMENT

1.6.1 PROMPT PAYMENT ACT

Pay requests authorized in CONTRACT CLAUSES clause: "Payments Under Fixed-Price Construction Contracts", will be paid pursuant to the clause, "Prompt Payment for Construction Contracts". Pay requests will be submitted on ENG Form 93 and 93a, "Payment Estimate-Contract Performance" and "Continuation". All information and substantiation required by the identified contract clauses will be submitted with the ENG Form 93, and the required certification will be included on the last page of the ENG Form 93a, signed by an authorized contractor official and dated when signed. The designated billing office is the Office of the Area Engineer.

1.6.2 PAYMENTS FOR MODIFICATIONS

Payments may be made for cost bearing change orders within the scope of the contract only to the extent funds are authorized in the order on a two-part modification. Contractor pricing proposed must be submitted at the earliest possible time after the change order is issued, or at a specific time as directed by the Contracting Officer. At the discretion of the Contracting Officer, any and all payments may be withheld on the modification until the Contractor has submitted a qualifying price proposal, in as much detail as required by the Contracting Officer, and the final price has been agreed.

1.6.3 PAYMENT FOR MATERIALS DELIVERED OFFSITE (MAR 1995)

a. Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.

b. Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. Payment for materials delivered off-site includes petroleum products. (List additional items for which payments will be made for off-site delivery.) (EFAR 52.232-5000)

1.7 DAMAGE TO WORK

The responsibility for damage to any part of the permanent work shall be as set forth in the CONTRACT CLAUSES clause: "Permits and Responsibilities." However, if, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood or

earthquake, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to CONTRACT CLAUSES clause: "Changes," of the contract will be made as full compensation for the repairs of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided, damage to all work (including temporary construction), utilities, materials, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the Contractor's expense, regardless of the cause of such damage.

1.8 AVAILABILITY AND USE OF UTILITY SERVICES

Use of public and private utilities will be as found available. The Contractor shall make his own arrangements for use of public and private utilities.

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

c. Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer. (FAR 52.236.16)

1.10 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

a. This clause specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed-Price Construction)." In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

(1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

(2) The unusually severe weather must actually cause a delay to the

completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

b. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(16)	(10)	(04)	(05)	(07)	(07)	(05)	(07)	(04)	(03)	(02)	(11)

c. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph b. above, the contracting officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)". (ER 415-1-15)

1.11 INSURANCE REQUIRED

In accordance with CONTRACT CLAUSES clause: "Insurance Work on a Government Installation," the Contractor shall procure the following minimum insurance:

Type	Amount
Workmen's Compensation and Employer's Liability Insurance	\$100,000
General Liability Insurance	\$500,000 per occurrence
Automobile Liability Insurance	
Bodily injury	\$200,000 per person and \$500,000 per occurrence
Property damage	\$ 20,000 per occurrence

(Coverages per FAR 28.307-2)

1.12 CONTRACTOR QUALITY CONTROL (CQC)

See Section 01451A Contractor Quality Control.

1.13 NONDOMESTIC CONSTRUCTION MATERIALS

The List of nondomestic construction materials or their components included in the list set forth in paragraph 25.104 of the Federal Acquisition

Regulation does not apply to the requirements of the contract clause entitled "Buy American Act Construction Materials".

1.14 DAILY WORK SCHEDULES

In order to closely coordinate work under this contract, the Contractor shall prepare a written agenda/meeting minutes and attend a weekly coordination meeting with the Contracting Officer and Using Service at which time the Contractor shall submit for coordination and approval, his proposed daily work schedule for the next two week period. The Contractor shall provide a copy of modifications (MODs), Serial Letters, Requests for Information (RFIs) and any other information that is needed in the minutes of the meeting. Required temporary utility services, time and duration of interruptions, and protection of adjoining areas shall be included with the Contractor's proposed 2-week work schedule. At this meeting, the Contractor shall also submit his schedule of proposed dates and times of all preparatory inspections to be performed during the next 2 weeks. Coordination action by the Contracting Officer relative to these schedules will be accomplished during these weekly meetings. Daily reports shall be completed and given to the Contracting Officer or Representative within 24 hours of work

1.15 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)

a. This statement shall become operative only for negotiated contracts where cost or pricing data is requested, and for modifications to sealed bid or negotiated contracts where cost or pricing data is requested. This clause does not apply to terminations. See 52.249-5000, Basis for settlement of proposals and FAR Part 49.

b. Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the Contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series of 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 V. Copies of each regional schedule may be obtained through the following internet site:

<http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep.htm>. 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 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. (EFARS 52.231-5000)

1.16 AS-BUILT DRAWINGS

See SECTION 01040 - AS-BUILT DRAWINGS

1.17 PERFORMANCE OF WORK BY CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government. (FAR 52.236-1)

1.18 PROFIT

a. Weighted guidelines method of determining profit shall be used on any equitable adjustment change order or modification issued under this contract. The profit factors shall be as follows:

Factor	Rate	Weight	Value
Degree of Risk	20	See Item	
Relative difficulty of work	15	b. below	
Size of Job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	25		

100

b. Based on the circumstances of each procurement action, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totalled indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

(1) Degree of Risk. Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items will have, generally, a higher weighted value than the unit price items for which quantities are provided. Other things to consider: the portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in costs, and whether the negotiation is before or after performance of work.

(2) Relative Difficulty of Work. If the work is most difficult and complex, the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with

the degree of risk. Some things to consider: the nature of the work, by whom it is to be done, where, and what is the time schedule.

(3) Size of Job. All work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05.

(4) Periods of Performance. Jobs in excess of 24 months are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed 30 days. No weight where additional time not required.

(5) Contractor's Investment. To be weighted from .03 to .12 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, mobilization payment item, Government furnished property, equipment and facilities, and expediting assistance.

(6) Assistance by Government. To be weighted from .12 to .03 on the basis of average to above average. Things to consider: use of Government-owned property, equipment and facilities, and expediting assistance.

(7) Subcontracting. To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.

1.19 LABOR CONDITIONS APPLICABLE TO TEMPORARY FACILITIES

It is the position of the Department of Defense that the Davis-Bacon Act, 40 U.S.C. 276a is applicable to temporary facilities such as batch plants, sandpits, rock quarries, and similar operations, located off the immediate site of the construction but set up exclusively to furnish required materials for a construction project on the site of the work. Clause "Payrolls and Basic Records" of the CONTRACT CLAUSES is applicable to such operations.

1.20 DRAWING SCALES

All scales shown are based on a standard drawing size of 28" x 40" . If any other size drawings are furnished or plotted, the contractor shall adjust the scales accordingly. The Contractor shall also advise his sub-contractors of the above.

1.21 WAGE RATE APPLICATION

For copies of Wage Rates, See Attachment: GENERAL WAGE DECISIONS. Applicable to all work.

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

(a) The offeror's attention is called to the Equal Opportunity clause and

the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

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

Goals for Minority Participation for Each Trade *****	Goals for Female Participation for Each Trade *****
5.3	6.9

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

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

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

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

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Omaha EA-143, which Washington county is a part of.

- a. This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations, and from future contributions to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.
- b. The sum of \$50,000 has been reserved for this contract and is available for payments to the Contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.
- c. Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the Contractor to a price adjustment under the terms of this contract except as specifically provided in certain paragraphs below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefor.
- d. The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The Contracting Officer will promptly notify the Contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.
- e. If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the Contractor shall give written notice to the Contracting Officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.
- f. No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The Contractor shall be entitled to simple interest on any payment that the Contracting Officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.
- g. Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.
- h. An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.
- i. If, upon the expiration of sixty (60) days after the beginning of the

fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the Contractor, by written notice delivered to the Contracting Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

j. If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

1.24 (DFAR 252.236-7002) OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

The Contractor shall 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. The Contractor shall give immediate notice, with description and locations of any such obstruction, to the Contracting Officer; and when required by the Contracting Officer, mark or buoy such obstructions until the same are removed. The Contracting Officer may remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with this paragraph and deduct the cost of removal from any monies due or to become due to the Contractor; or the Contracting Officer may recover the cost of removal under the Contractor's bond. 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.).

1.25 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as set forth in Commandant U.S. Coast Guard Instruction M1672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 33 CFR81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland) as applicable.

1.26 (EFARS 52.236-5000) PLANT AND MATERIAL REMOVAL AFTER CONTRACT TERMINATION(MAR 1995)

Should this contract be terminated as provided in clause 52.232-5001 because of the failure of Congress to provide additional funds for its completion, the contractor may be permitted to remove plant and material on which payments for preparatory work have been made, subject to an equitable deduction from the amounts due the contractor to reimburse the United States for the unabsorbed value of such plant and material.

1.27 FEDERAL HOLIDAYS

The following Federal legal holidays are observed by this installation:

New Year's Day	1 January
Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	4 July
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	11 November
Thanksgiving Day	Fourth Thursday in November
Christmas Day	25 December

If a wage determination applies the number of holidays specified on it, it has priority over this clause.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

GENERAL DECISION NE010001 09/28/01 NE1

General Decision Number NE010001

Superseded General Decision No. NE000001

State: Nebraska

Construction Type:

HEAVY
HIGHWAY

County(ies):

DOUGLAS SAUNDERS
SARPY WASHINGTON

HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; other major bridges)

SAUNDERS COUNTY (EAST OF HWY. #109 EXTENDED NORTH AND SOUTH TO THE COUNTY LINE)

Modification Number	Publication Date
0	03/02/2001
1	03/09/2001
2	03/30/2001
3	04/06/2001
4	07/20/2001
5	09/14/2001
6	09/28/2001

COUNTY(ies):

DOUGLAS SAUNDERS
SARPY WASHINGTON

CARP0444B 11/01/2000

	Rates	Fringes
CARPENTER; PILED RIVER	18.64	5.40

ELEC0022B 06/01/2001

	Rates	Fringes
DOUGLAS AND SARPY COUNTIES; SAUNDERS COUNTY (east of Hwy. #109 and north of U.S. Alternate Highway No. 30 (Route 92)); AND WASHINGTON COUNTY:		
ELECTRICIAN	24.25	3.75% + 7.57

ELEC0265A 08/01/2000

	Rates	Fringes
SAUNDERS COUNTY (east of Hwy. #109 and south of U.S. Alternate Hwy. No. 30 (Route 92)):		

ELECTRICIAN:

Zone 1	19.31	4.5% + 5.15
Zone 2	19.61	4.5% + 5.15
Zone 3	19.91	4.5% + 5.15
Zone 4	20.31	4.5% + 5.15

ZONE DEFINITIONS:

Zone 1: 0 to 35 miles from the main Post Office in Lincoln, NE
 Zone 2: 36 to 50 miles from the main Post Office in Lincoln, NE
 Zone 3: 51 to 75 miles from the main Post Office in Lincoln, NE
 Zone 4: 76 miles and over from the main Post Office in Lincoln, NE

ELEC1525A 09/01/2000

	Rates	Fringes
LINE CONSTRUCTION:		
LINE TECHNICIANS:		
Line technician	21.99	27.75%+2.00
Cable splicer; Line welder	23.64	27.75%+2.00
Line equipment operator	19.74	27.75%+2.00
Truck driver	15.79	27.75%+2.00
Ground person	14.23	27.75%+2.00

POLE TREATING CLASSIFICATIONS:

Pole treating inspector	21.99	27.75%+2.00
Pole treating truck driver	15.79	27.75%+2.00
Pole treating ground person	14.23	27.75%+2.00

ELEC1525C 09/01/2000

	Rates	Fringes
TRAFFIC SIGNAL, STREET LIGHT AND UNDERGROUND WORK:		
Line technician	21.99	27.75%+2.00
Cable splicer; Line welder	23.64	27.75%+2.00
Equipment operator	19.74	27.75%+2.00
Truck driver	15.79	27.75%+2.00
Ground person	14.23	27.75%+2.00

ENGI0571C 04/01/2001

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
Oiler, greaser, air compressor, welding machine, pump, roller, forklift, hydrohammer, pug mill, concrete pump, cure and tyne machine, rubber-tired farm tractor	14.04	3.85
Off-road heavy hauler, Rough Roller dozer, rough blade, Ferguson-type tractors (Workbull with high		

tecco), asphalt roller	17.71	3.85
One and two drum hoists, tugger, trencher, concrete spreader & finishing machine, dozer loader, spread oiler, bantam-type tamper, rubber-tired tractor backhoe, oil distributor-finish roller dozer	19.26	3.85
Trimmer, crane, backhoe, mechanic, slip form paver, asphalt plant- concrete plant, laydown machine, concrete pump truck, finish blade, scraper	19.98	3.85

FOOTNOTES:

Operation of an articulating, Pitman type boom truck with single axle truck and lift capacity of less than 5,000 lbs., used to put construction materials in place: 90% of the group 2 rate.

When two (2) scraper units or two push cat units capable of operating separately are hooked together in tandem for single operation, the operator shall receive twenty-five cents (\$0.25) over the classification worked.

When air compressors are used for operating the hammer when pulling or driving pile and the compressor operator is required to operate the air valve for such hammer, such compressor

operator shall receive the top wage rate.

Operators working in tunnels and caverns under compressed or free air shall receive forty cents (\$0.40) above their classification.

Hazardous waste removal work requiring the wearing of personal protective equipment and/or suits, to be paid as follows:

- Group 1: \$3.00 additional per hour
- Group 2: 2.00 additional per hour
- Group 3: 1.00 additional per hour
- Group 4: no premium pay.

IRON0021C 06/01/2000

	Rates	Fringes
IRONWORKER	20.01	5.91

* LABO1140D 06/01/2001

	Rates	Fringes
DOUGLAS AND SARPY COUNTIES; SAUNDERS COUNTY (east of Hwy. #109):		

LABORERS:

Sanitary improvement work:

General laborer	15.06	3.90
Mortar mixer, concrete saw operator, pipelayer and chain		

saw operator	15.35	3.90
Form setter, pre-cast manhole setter, inlet builder	15.79	3.90
All other work:		
General laborer	12.05	3.90
Mortar mixer, concrete saw operator, pipelayer and chain saw operator	12.34	3.90
Form setter, pre-cast manhole setter, inlet builder	12.80	3.90

* LABO1140G 06/01/2001

	Rates	Fringes
WASHINGTON COUNTY:		
LABORERS:		
General laborer	11.05	3.90
Mortar mixer, concrete saw operator, pipelayer and chain saw operator	11.34	3.90
Form setter, pre-cast manhole setter, inlet builder	11.80	3.90

PAIN0109D 01/01/2000

	Rates	Fringes
PAINTER	17.46	3.77

FOOTNOTES:

All swing stage work from the ground up; all work, exterior and interior, on scaffolding forty-five (45) and above; all work in confined spaces; lead abatement work; any and all work considered unusually hazardous and interpreted as endangering life or limb in case of accident, including all hazardous portions of bridges, new and old, supports on steel trusses pertaining to bridges, new or old, and interior of elevator shafts; all operators of spray machines; all nozzle operators for sandblasting and waterblasting (waterblasting more than 2,000 PSI), including all side arm grinder operators engaged in removing paint or preparing for painting: \$0.60 per hour additional.

All steel or iron work and structural steel or iron work or pipes painted on scaffolding suspended from such steel or iron work, or any structural steel or iron work or pipes, that in order to be painted must be walked on or crawled upon, and any and all work that is considered hazardous: \$0.35 per hour additional.

SUNE2001A 12/20/1988

	Rates	Fringes
CEMENT MASON	13.62	3.00

SUNE2005A 08/05/1993

	Rates	Fringes
SPRINKLER INSTALLER (LAWN)	5.15	

TEAM0554A 01/01/2001

	Rates	Fringes
TRUCK DRIVERS:		
Low boy driver	15.97	4.05
All other work	14.82	4.05

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N. W.

Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

NE010001-6

Contractor Distribution List for Project

Name: Habitat Restoration Project Project
Location: Missouri River- California Bend near Blair, NE
Sol. No. : DACW45-02-B-0021
P.M.: Marty Timmerwilke, Ext. 4020

Contractor shall reproduce multiple hardcopy sets of contract drawings from government provided CD Rom. Drawings shall be forwarded to addresses listed below.

Address	Full Size	Half Size
Fort Crook Area Office U.S. Army Corps of Engineers P.O. Box 13287 Offutt AFB, NE 68113	2	3
Offutt Resident Office U.S. Army Corps of Engineers P.O. Box 13287 Offutt AFB, NE 68113	1	2
Nebraska Resident Offic U.S. Army Corps of Engineers P.O. Box 13287 Offutt AFB, NE 68113	1	2
U.S. Army Corps of Engi Attn: CENWO-CT (D. Boganowski) 106 South 15th Street Omaha, Nebraska 68102-1618	0	7
Mr. Jim Becic Natural Resources 8901 S. 154th St. Omaha, NE 68154		2
Total Copies:	<hr/> <hr/> 4 Full Size	<hr/> <hr/> 16 Half Size

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SECTION 01040

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5/00; Rev 06/02

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-- End of Section Table of Contents --

SECTION 01040

AS-BUILT DRAWINGS
5/00; Rev 06/02

PART 1 GENERAL

1.1 DEFINITIONS

The definitions listed below form a part of this specification.

1.1.1 Red-Line Drawings

Contract drawings marked-up to show actual work performed to include necessary sketches, modification drawings, shop drawings and notes. Green ink is used to indicate work deleted from the contract. Red ink is used for additions and deviations from the contract.

1.1.2 As-Built Drawings

Professional finished electronic CADD files developed from the original contract drawings that include all of the information from the redline drawings and suitable for half-size reproduction.

1.1.3 Vellum Drawings

Drawings on erasable Vellum 20# similar or equal to Xerox Zero solvent vellum.

1.1.4 Black-Line Drawings

Paper drawings reproduced from electronic CADD files or high quality reproducible drawings.

1.1.5 Full-Size Drawings

28 inches x 40 inches nominal size drawings with all details visually readable.

1.1.6 Half-Size Drawings

14 inches x 20 inches nominal size drawings with all details visually readable.

1.1.7 Modification Circle

A circle with a horizontal line through the center. The top half will contain the letter "P" with the bottom half containing the Modification number. The lettering standard will be 120/6 WRICO or similar.

1.1.8 Mylar Drawings

Drawings on polyester film, 3 or 5 mil, similar or equal to K & E Stabilene.

1.1.9 Electronic CADD Files

Electronic CADD files are files saved on CD-ROM in accordance with appropriate CADD standard. The CADD standard will include level on/off status, special characters, line wieghts, font, and size requirements.

1.2 GENERAL REQUIREMENTS

The work includes creation of electronic CADD files on Microstation SE for as-built drawings to accurately depict existing conditions of the project. As-Built Drawings will become the permanent record drawings of the construction. The Contractor is responsible for development of electronic CADD files in accordance with Omaha District CADD standards. Omaha District's CADD standards are located on the Omaha District's FTP site (<ftp://ftp.nwo.usace.army.mil/pub/ED/CADD/ae/standards/ACADstd.pdf>) for AutoCADD and (<ftp://ftp.nwo.usace.army.mil/pub/ED/CADD/ae/standards/Caddstd.PDF>) for Microstation. The Omaha District will furnish a CD of CAD (read-write) contract drawing files in the software language specified in paragraph Procedure below. This is the software language required by the Using Service. These drawing files shall be used to prepare required As-Built drawings. The As-Built drawings shall include all major features of the work and all details to the same level as the original contract set of drawings. All changes from the contract drawings, including but not limited to all deviations, additional information, and modifications to the contract. Where contract drawings or specifications allow for options, only the option selected and actually constructed shall be shown on the As-Built Drawings. Systems designed or enhanced by the Contractor such as HVAC control system, fire alarm system fire sprinkler system, irrigation sprinkler system, letters of clarification, shall be accurately and neatly recorded on the As-Built Drawings using the same symbols, terminology, and general quality as the original set of contract drawings. All sheets affected by a change shall be revised. The transmittal requirements for the As-built Drawings shall be shown as events on the Contractor prepared project schedule.

1.3 PAYMENT

In accordance with the clause "Payment Under Fixed - Price Construction Contracts", which provides for progress payments on estimates of work accomplished (which meets the standards of quality established under the contract), \$5,000 will be withheld from payment for the creation of As-Built drawings until the final as-built drawings are delivered to the Contracting Officer (including any necessary revisions and subject to the approval of the Contracting Officer).

1.4 TRANSMITTAL OF AS-BUILT DRAWINGS

1.4.1 Preliminary As-Built Drawings

The Contractor shall produce Preliminary As-Built Drawings indicating as-built conditions on Microstation SE with "clouding". As-Built preparation process is provided in paragraph As-Built Preparation below. Preliminary drawings shall consist of 15 percent of total project drawings. These drawings shall be sheets used for the construction of this project (excludes Cover Sheet, Vicinity Map, Location Plan and Indexes). The As-Built CADD files which include all changes up to the time Preliminary Drawings shall be sent as stated below. The Contractor shall draw attention to all drawing changes by "clouding" the affected area. This "clouding" shall be accomplished on layer 63 of the drawing file. The Preliminary Drawings shall consist of one (1) set of CADD files on a CD-ROM

and one (1) full-size set of the Black-Line Drawings. One (1) set of CADD files on a CD-ROM shall be submitted to the Omaha District Office (ATTN: CENWO-ED-DI, Jim Janicek). One (1) full-size set of the Black-Line Drawings shall be submitted to the COR. Both documents shall be submitted three (3) weeks prior to the final acceptance inspection unless otherwise directed by the COR. The COR will notify the Contractor in writing of approval / disapproval. The Contractor shall not submit the Final Drawings until he receives the COR's letter approving the Preliminary Drawings.

1.4.2 Final As-Built Drawings

The Contractor shall produce Final As-Built Drawings on Microstation SE without "clouding". As-Built preparation process is provided in paragraph As-Built Preparation below. The Final Drawings shall include all changes. The Final Drawings in the form of a CD-ROM shall be submitted to the COR and Omaha District Office (CENWO-ED-DI) no earlier than the day of acceptance of the project and no later than thirty (30) days after the date on the acceptance letter for the Preliminary Drawing unless otherwise directed by the COR. (Note: Final drawings shall not be forwarded to the customer. Corps of Engineers, Omaha District COR will forward to the customer after Quality Review.) Contractor shall submit one (1) set of CADD files on a CD-ROM to the Omaha District Office (ATTN: CENWO-ED-DI, Jim Janicek). Contractor shall send the following documents to the COR:

a) One (1) set of CADD files on CD-ROM (folder name containing as-built files shall be designated "AS-BUILTS" on each CD-ROM). Both CD case and CD-ROM shall contain the name of the project, location, specification number, and contract number, and words "As-Built Record Set"). The folder shall contain drawings, indexes and X-REF files related to all as-builts.

b) One (1) full-size set of red-lined hard copy drawings prepared by the Contractor during construction.

COR will forward one (1) full-size set of drawings along with CD-ROM to the customer.

1.4.3 As-Built Preparation

Both preliminary and final electronic as-built drawings shall be produced in accordance with the following process for MicroStation drawings:

1.4.3.1 For Microstation (*.DGN.) Files

- a. When opened, the drawing shall be seen exactly as it should be plotted.
- b. Only one view port is open in the file.
- c. The view shall be zoomed to fit the border.
- d. All information in the title block shall be filled in, including plot scale.
- e. The information in the title block shall be correct, including the design file name and the plot scale.
- f. All files shall reference a MicroStation border supplied by the Omaha District.
- g. Detach all unused reference files.
- h. For any half tone references, the logical name shall have common first or last character(s). Preferably use "_xxx" at the end of the logical name. Include this information with the pertinent information.
- i. All unnecessary information outside the border shall be deleted.
- j. All files shall be compressed.

k. All fonts used shall be included with the set, even if it is the standard MicroStation fonts.

l. An ASCII text file shall be provided with the following information: a brief history of how the files were created, reference file paths that should be added to MS_RFDIR, the name of your font resource file, the name and phone number of the person we need to contact if we have problems, and the version of MicroStation used to create and/or work on the drawings.

1.4.3.2 Not Used

1.4.3.3 Not Used

1.5 PROCEDURE

One (1) CD-ROM containing the contract drawings (read-write CADD files) and CADD standards in Microstation SE format, for use in the preparation of As-Built Drawings by the Contractor, will be forwarded to the Resident Engineer. This CD-ROM will then be furnished to the Contractor after signed receipt to the Resident Engineer. The Contractor shall create a set of electronic Cadd files and full-size Red-Line Drawings to fully indicate As-Built conditions. The Red-Line Drawings shall be maintained at the site, in a current condition until the completion of the work and shall be available for review by the COR at all times. All as-built conditions shall be on the Red-Line Drawings within two (2) days after the work activity is completed or shall be entered on the deficiency tracking system (see Section 01451A, CONTRACTOR QUALITY CONTROL). The Contractor shall not convert electronic drawing files from one software language to another (i.e. Microstation to AutoCAD or AutoCAD to Microstation).

1.6 TITLE BLOCKS

The contract number and the specification number (if available) shall be shown on all sheets. "RECORD DRAWING" shall be added below the title block on all sheets. All modifications to the contract shall be posted in ascending order. The top line of the revision box shall state "REVISED TO SHOW AS-BUILT CONDITIONS" and dated. All modifications to all plans, sections, or details, shall have a modification number placed in the revision box under column entitled "Symbol". The statement "GENERAL REVISIONS" may be used when applicable. The date to be added in the revision box for modifications is found in Block 3 of Form SF-30. Cover Sheet will have Contract Award Set changed to As-Built Record Set with month & year completed. Month and year completed will also go in the date box in the title block. There will be no separate dates.

1.7 PROCEDURES FOR POSTING MODIFICATION CHANGES TO DRAWINGS

Follow directions in the modification for posting descriptive changes.

A Modification Circle shall be placed at the location of each deletion.

The highest modification number on the sheet should be shown in the modification circle in the "DATE" and "DRAWING CODE" boxes of the title block.

For all new details or sections that are added to a drawing, place a Modification Circle by the detail or section title.

For changes to a drawing, place a Modification Circle by the

title of the affected plan, section or detail titles (each location).

For changes to schedules on drawings, a Modification Circle shall be placed either by the schedule heading or by the change in the schedule.

The Modification Circle size shall be 1/2-inch diameter unless the area where circle is to be placed is crowded. Use smaller size circle for crowded areas.

1.8 WORD ABBREVIATIONS

Abbreviations shown on the abbreviation sheet shall be used to describe all work items. Additional word abbreviations, not found on the abbreviation sheet but necessary to describe the work, shall be properly identified and incorporated with the other standard word abbreviations.

1.9 LEGEND SHEETS

Symbols, which conflict with those on the original contract legend sheet, shall not be used. Additional symbols, properly identified, necessary to depict any additional work items, shall be added to the legend sheet or supplemental legend. Those projects that do not have legend sheets may use supplemental legends on each sheet where symbol is shown.

1.10 CONTRACTOR SHOP DRAWINGS

Contractor shop drawings, which supersede data on the contract plans and/or additional drawings, prepared by the Contractor, shall be incorporated into the As-Built Drawings. Design plans prepared by Contractor shall include the designer's name on the As-Built Drawings.

1.11 INDEXING OF DRAWINGS

If drawings are added to the portfolio of drawings to depict as-built conditions, the index of drawings shall be revised accordingly.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 GENERAL

As-Built drawings shall include as-built information to the same level of detail as shown on the original details, unless otherwise specified. The Contractor shall provide any additional full-size drawings as required to display all the details.

3.2 SITE WORK

3.2.1 Utilities

All utilities shall be shown whether active, inactive, shown on the original contract drawings, or found on-site. The type of utility, location, general direction, size, material make-up and depth shall be shown. The location and description of any utility line or other installations of any kind known to exist within the construction area shall be shown. The location shall include dimensions to permanent features.

3.2.2 Structures

Structures above and below ground shall be shown. The size, material make-up, location, height, and/or depth shall be shown. Manholes shall show rim elevation and invert elevations as applicable. Power poles shall show electrical equipment and voltage rating.

3.2.3 Grades

Grade or alignment of roads, structures, or utilities shall be corrected if any changes were made from the contract drawings. Elevations shall be corrected if changes were made in site grading.

-- End of Section --

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SECTION 01200

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5/00; Rev 01/02

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-- End of Section Table of Contents --

SECTION 01200

CONSTRUCTION GENERAL
5/00; Rev 01/02

PART 1 GENERAL

Attachments: Standard Drawings Nos. OD15-9A12 and OD15-9A24

1.1 SCOPE

The work covered in this section is outlined as a statement of construction requirements common to all the work. Specific requirements for materials and installations are provided under the Technical Sections herewith. No claims for extras shall be made on account of items presumed to have been omitted from this section.

1.2 CONSTRUCTION RIGHT-OF-WAY

The Contractor will be assigned working areas or working right-of-way limits for use in the prosecution of work under this contract, subject to the CONTRACT CLAUSES clause entitled "Operations and Storage Areas."

1.3 PROTECTION OF EXISTING FACILITIES AND WORKS

The Contractor shall be responsible for the protection of the work area from damage and upon completion of the work shall leave existing works in a condition equal to that which existed when the work started. All work, storage of materials, and construction plant shall be kept within the limits of the areas assigned. Prior to construction operations, the Contractor shall confer with the Contracting Officer's representative to determine the proximity of any possible under-ground obstructions, pipe or equipment which could be damaged as a result of construction operations. Existing utility lines that are shown on the drawings or the locations are otherwise made known to the Contractor shall be protected from damage, and if damaged, shall be repaired by the Contractor at no additional expense to the Government. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which have not been made known to the Contractor, report thereof shall be made immediately to the Contracting Officer. If the Contracting Officer determines that repairs shall be made by the Contractor, such repairs will be ordered under CONTRACT CLAUSES clause entitled "Changes." The Contractor will be responsible for the protection of structures from any structural damage during the construction operations. Roads and surfaces shall be protected from damage by the work or if damaged shall be repaired with equal materials at no additional expense to the Government. At all times the plant and work areas shall be kept in a condition conducive to safety of workmen and the public and neat in appearance. Waste or surplus materials shall not be allowed to accumulate in the construction areas.

1.4 CARE OF WATER

Full responsibility for care of water shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide

the materials and equipment and perform all work necessary to facilitate construction and to protect the work from damage by water. The Contractor shall make his own investigations and determinations of conditions, both existing and anticipated concerning care of water. Plans for care of water are subject to approval by the Contracting Officer prior to construction. Facilities shall be removed upon completion of the work.

1.5 DISPOSITION OF CONSTRUCTION FACILITIES

All buildings and facilities constructed by the Contractor shall be maintained in a satisfactory condition with strict observance of the rules of sanitation, safety and order as may be established by the Contracting Officer. Prior to final payment under the contract, all buildings and facilities constructed by the Contractor for his own use shall be removed from the site by the Contractor.

1.6 ACCESS ROADS AND HAUL ROADS

1.6.1 Access Roads

Access roads as required for the prosecution of the work shall be maintained (including sprinkling for dust control, safety personnel, signals and control) within the work areas assigned to the Contractor. Consideration shall be given to the avoidance of interference with others, safety and frequency of traffic, subject to review and approval prior to construction. Access road areas shall be restored to their original or suitable condition upon completion of this contract. The Contractor shall be responsible for repair of damage to existing roads caused by his operation.

1.6.2 Haul Roads

The Contractor shall construct haul roads as may be necessary for the conduct of the work without additional cost to the Government. The Contractor shall arrange his hauling operations so as to cause a minimum interference with traffic and shall furnish flagmen and other facilities as required to avoid additional hazards to the public. Lines, grades and widths for haul roads, shall be selected to fulfill the requirements for safe and efficient hauling operations and shall be approved by the Contracting Officer prior to construction. Haul roads shall have ample width to provide safety. Preference shall be given to one-way haul roads when these are feasible. All roads shall be maintained in first class condition during all periods of their use. Roads shall be sprinkled whenever, in the opinion of the Contracting Officer, control of dust is necessary to insure safe movements of construction traffic. Upon completion of work under this contract, roads shall be disposed of as directed by the Contracting Officer. All signs, culverts, guards, fences and other improvements on roads constructed for the Contractor's convenience and operations shall be removed from the project site and shall remain his property. Use and repair of existing roads and bridges shall be subject to the requirements of local authorities. Prior to start of hauling operations on public roads, the Contractor shall furnish written evidence to the Contracting Officer that an agreement has been consummated with State and County officials on the use of public roads and bridges. Such agreements shall clearly relieve the Government of any responsibility for damage resulting from hauling across or on these roads.

1.6.3 Waterway Crossings

The Contractor shall construct approved crossings where hauling is to be done across waterways with adequate openings for drainage and streamflow. Structures for crossings shall be safe for all operating equipment and vehicles and shall be adequate for drainage and flow of the waterway. After haul for construction has ceased, the structures constructed by the Contractor shall be removed and disposed of as directed.

1.6.4 Ramps

Ramps shall be provided and maintained for access of hauling equipment into excavation and waste areas. Locations, grades and width are subject to review and approval by the Contracting Officer prior to construction.

1.6.5 Drainage

The Contractor shall provide and maintain ditches, dikes and other facilities within and adjacent to the work areas to direct the surface and subsurface flow of water away from abutting private property and work in place or under construction by this and other contracts. The design, location, type and size of drainage facilities are subject to review and approval by the Contracting Officer prior to construction.

1.7 COOPERATION WITH OTHERS

The Contractor shall cooperate and coordinate his work with that of others as required for orderly completion of all work. In the event of disagreement between the Contractor and others, the decision of the Contracting Officer shall be final.

1.8 WORK BY OTHERS

Public and private authorities may be working in the area during the life of this contract. The Contractor shall coordinate his work with others to avoid undue interference, and shall conduct his operations, other than required access, within the limits of the assigned construction area or construction right-of-way limits. Specifications and drawings showing work under other contracts are available for examination at the Corps of Engineers District Office, 215 North 17th Street, Omaha, Nebraska 68102-4978, or at the Office of the Area Engineer.

1.9 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Proposed Methods of Operation; G-RE

Progress Charts; G-RE

SD-02 Shop Drawings

Care of Water; G-RE

SD-11 Closeout Submittals

Warranty of Construction

List of warranties with copy of each

1.10 SPECIAL INSTRUCTIONS FOR PROGRESS CHARTS

To be submitted in accordance with the CONTRACT CLAUSES clause entitled "Schedule for Construction Contracts" shall indicate the required data for each of the principal features of the work. Contract changes or modifications will not include extensions of time unless the updated progress chart shows that the contract completion date is delayed due to the affect of the change on one or more principal features of the work.

1.11 PROJECT SIGN

(a) General:

The Contractor shall provide a new project sign constructed in accordance with Standard Drawing Nos. OD15-9A12 and OD15-9A24, bound herein. The Contractor shall erect the sign on the project site at a location determined by the Contracting Officer.

(b) Text for Sign:

Standard drawing OD15-9A24 specifies placement of the US Army COE, Omaha District decal at the upper left, and shows the location for the "Project Name", "Flood Protection Project" and "Name of River Basin." The project name for this project is California Bend. Below the Project Name, substitute **Habitat Restoration Project** for "Flood Protection Project." This line is to be centered left-to-right. Substitute **Missouri River** for "Name of the River Basin", and center that line L-to-R also. The Contracting Officer's Representative will provide the decalcomania for both the Corps of Engineers and the Papio-Missouri River Natural Resources District's (NRD) insignia. The NRD's decal will be placed in the upper right corner, 4 inches down from the top of the sign, and 8 inches from the right edge.

(c) Payment:

No separate payment will be made for the sign. It shall be left in place until completion of the contract, and shall become the property of the Government.

1.12 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for

a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud. (FAR 52.246-21)

1.13 ACCOMMODATIONS FOR GOVERNMENT PERSONNEL

The Contractor shall furnish and maintain an office type trailer for the use of Government inspectors. The trailer shall have a minimum floor space of 200 sq. ft. The trailer shall meet the following requirements:

Sufficient blocks to steady the trailer when spotted for use. An entrance near each end with each entrance equipped with a door with fixed window and screen door. Approximately 40 sq. ft. ventilating type of window space with all windows having louvered screens or screens and awnings or venetian blinds. Floors, ceiling and walls to be insulated. Ceiling vents with at least one having an exhaust fan. Varnished plywood interior. Inlaid linoleum covered floors. Ceiling light operated from switch at door. Fluorescent 2-40 watt tube fixtures at each end of trailer. Double electric outlets located near ends of trailer with one exterior weatherproof outlet. Electric 5-gal. water cooler with two plastic bottles. Forced-air central oil or gas heating unit with minimum capacity of 15,000 B.t.u. per hour, thermostatic controlled. Thermostatically controlled 12,000 B.t.u. air conditioning unit. Wardrobe of approximately 48 inch length. Kneehole desk 30" x 32" x 5'0", with 3 drawers on each side of the kneehole; drafting stool, swivel chair with arms, 4 straight-back or folding chairs. Drafting table on shelf with built-in cabinets below. Plan rack capable of holding approximately 75 standard drawings. Five lb. CO2 fire extinguishers. Exterior toilet facilities. The trailer shall be located at the direction of the Contracting Officer. The Contractor shall provide accommodations, janitor service, fuel for light plant and heating facilities, electricity, telephone and water, all at no cost to the Government, except that the Contractor will not be liable for Government long-distance calls. Upon completion of the contract, the trailer shall remain the property of the Contractor and shall be removed from the site of the work.

1.14 PORTABLE TOILETS

Toilet facilities will not be available for Contractor's use. The Contractor shall provide and maintain portable toilets for use by the Contractor's staff. Toilet(s) shall be placed at the location directed by the Contracting Officer.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

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J K L M N O P Q R
S T U V W X Y Z
abcdefghijklmnop
qrstuvwxyz
1 2 3 4 5 6 7 8 9 10

A B C D E F G H I J K L M
N O P Q R S T U V W X Y Z
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qrstuvwxyz
1 2 3 4 5 6 7 8 9 10

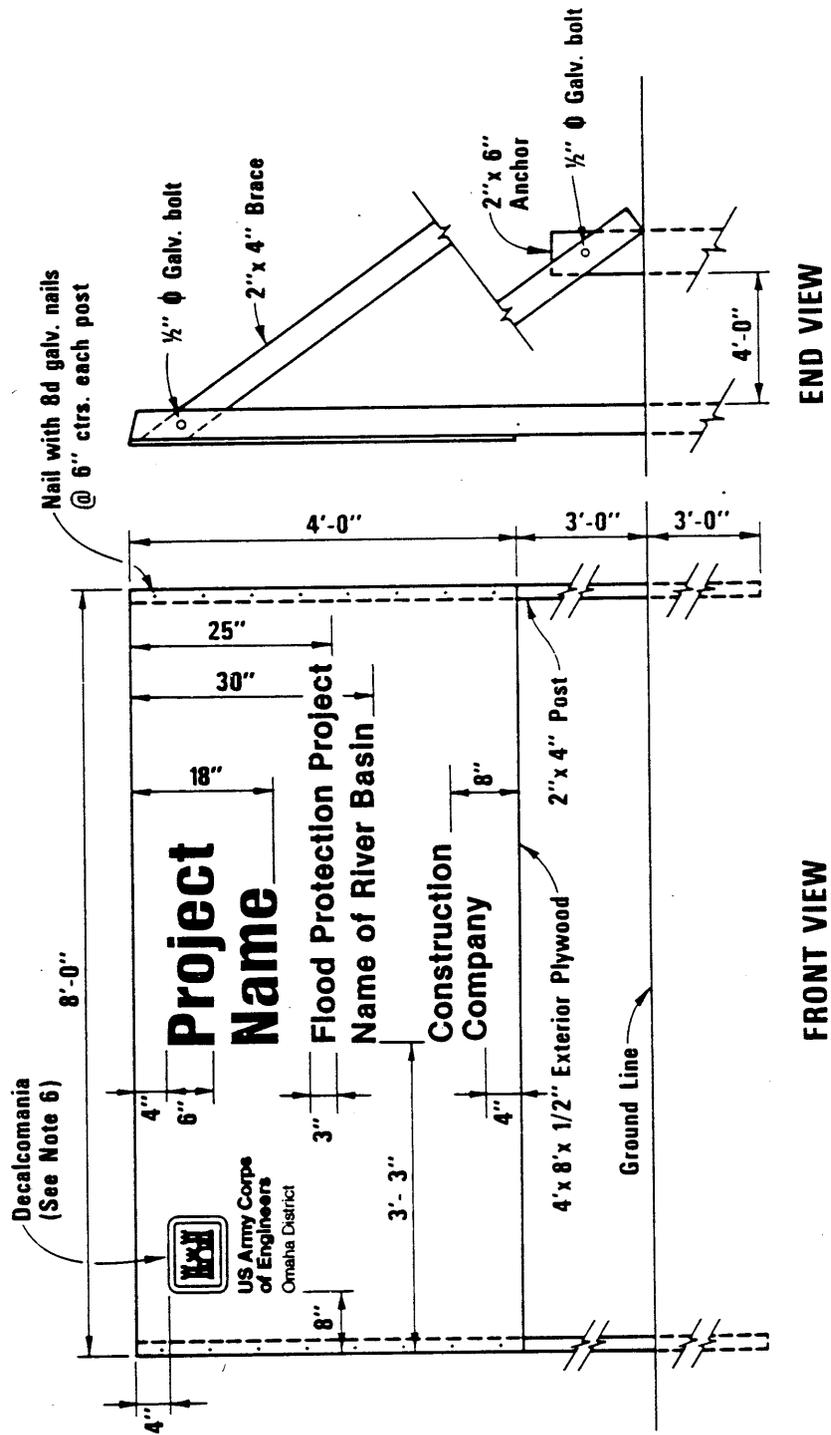
Note: Above lettering styles are Helios Extra Bold Condensed and Helios Bold II.
Helvetica Black Roman and Helvetica Bold Roman are acceptable substitutes.

STANDARD
ALPHABET & NUMERALS
OFFICE OF THE DISTRICT ENGINEER
OMAHA, NEBRASKA
REV. NOVEMBER, 1982

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NOTES:

1. Posts to be S4S.
2. Plywood shall be exterior type, A-C grade.
3. Before painting, surface to be clean, dry, free from grease and sanded.
4. Paint with one prime coat zinc oxide and two finish coats grey, Pantone "402" or #26357 in Fed. Std. 595, semi-gloss, enamel, conforming to Fed. Specs. TT-P-102.
5. All lettering to be white enamel on grey background.
6. Decalcomania for Corps of Engineers insignia will be furnished by the Contracting Officer for installation by the Contractor.



STANDARD
PROJECT SIGN
FLOOD PROTECTION
OFFICE OF THE DISTRICT ENGINEER
OMAHA, NEBRASKA
REV. NOVEMBER, 1982

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SECTION 01330

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09/01; Omaha Update 07/02

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SECTION 01330

SUBMITTAL PROCEDURES
09/01; Omaha Update 07/02

PART 1 GENERAL

Attachments: Submittal Register
ENG Form 4025, Transmittal Form

1.1 CONTRACTOR RESPONSIBILITIES

The Contractor is responsible for total management of his work including scheduling, control, and certification of all submittals. The submittal management system provided in these specifications is intended to be a complete system for the Contractor to use to control the quality of materials, equipment and workmanship provided by manufacturers, fabricators, suppliers and subcontractors. The Contractor shall review each submittal for contract compliance. Submittals that comply will be forwarded to the Government. Submittals that do not conform will be returned to the originator to be corrected. The Submittal Register (ENG Form 4288) will be utilized to log and monitor all submittal activities. No construction or installation activities shall be performed prior to required approvals of applicable submittals. The Contractor shall perform a check to assure that all materials and/or equipment have been tested, submitted and approved during the preparatory phase of quality control inspections.

1.2 SUBMITTAL IDENTIFICATION (SD)

Submittals required are identified by SD numbers and titles as follows:

SD-01 Preconstruction Submittals

Tabular lists showing location, features, or other pertinent information regarding products, materials, equipment, or components to be used in the work.

In addition, the following items are included:

Construction Progress Schedule
Health and safety plan
Work plan
Quality control plan
Environmental protection plan
Permits

SD-02 Shop Drawings

Submittals which graphically show relationship of various components of the work, schematic diagrams of systems, details of fabrication, layouts of particular elements, connections, and other relational aspects of the work.

SD-03 Product Data

Catalog cuts, illustrations, schedules, diagrams, performance charts, instructions and brochures illustrating size, physical appearance and other characteristics of materials or equipment for some portion of the work.

Samples of warranty language when the contract requires extended product warranties.

SD-04 Samples

Samples, including both fabricated and unfabricated physical examples of materials, products, and units of work as complete units or as portions of units of work.

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 ensuring 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

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 accordance 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 checklists

Final acceptance test and operational test procedure

SD-07 Certificates

A document, required of the Contractor, or through the Contractor, from a supplier, installer, manufacturer, or other lower tier Contractor, the purpose of which is to confirm the quality or orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel, qualifications, or other verifications of quality.

Statement signed by an official authorized to certify on behalf of the manufacturer of a product, system or material, attesting that the product, system or material meets specified requirements. The statement must be dated after the award of the contract, must state the Contractor's name and address, must name the project and location, and must list the specific requirements which are being certified.

Confined space entry permits.

SD-08 Manufacturer's Instructions

Preprinted material describing installation of a product, system or material, including special notices and material safety data sheets, if any, concerning impedances, hazards, and safety precautions.

SD-09 Manufacturer's Field Reports

Documentation of the testing and verification actions taken by manufacturer's representative to confirm compliance with manufacturer's standards or instructions.

Factory test reports.

SD-10 Operation and Maintenance Data

Data intended to be incorporated in operations and maintenance manuals.

SD-11 Closeout Submittals

Documentation to record compliance with technical or administrative requirements or to establish an administrative mechanism.

In addition, the following items are included:

As-built drawings

Special warranties

Posted operating instructions

Training plan

1.3 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

1.3.1 Government Approved

Governmental approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings." All submittals noted in the technical specifications and Submittal Register as "G-ED", "G-AE" or "G-RE" are subject to Government Approval.

1.3.2 Information Only (FIO)

All submittals not requiring Government approval will be for information

only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above. The Contracting Officer has the option to review any submittal.

1.4 APPROVED SUBMITTALS

The Contracting Officer's approval of submittals shall not be construed as a complete check, but will indicate only that the general method of construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for dimensions, the design of adequate connections and details, and the satisfactory construction of all work. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

1.5 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, a notice in accordance with the Contract Clause "Changes" shall be given promptly to the Contracting Officer.

1.6 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

1.7 GENERAL

The Contractor shall make submittals as required by the specifications. The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections. Units of weights and measures used on all submittals shall be the same as those used in the contract drawings. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) System Manager and each item shall be stamped, signed, and dated by the CQC System Manager indicating action taken. Proposed deviations from the contract requirements shall be clearly identified. Submittals shall include items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list); certifications; warranties; and other such required submittals. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby. Samples remaining upon completion of the work shall be picked up and disposed of in accordance with manufacturer's Material Safety Data Sheets (MSDS) and in compliance with existing laws and regulations.

1.8 SUBMITTAL REGISTER AND ENG FORM 4288 (RMS) SUBMITTAL REGISTER

At the end of this section is a submittal register (submittal form) showing

items of equipment and materials for which submittals are required by the specifications; this list may not be all inclusive and additional submittals may be required. The attached submittal register identifies only the submittal section, type of submittal, description of item submitted, paragraph number related to submittal item (section submittal paragraph if none listed), submittal classification (G), and submittal reviewer identifier (ED, AE or RE). Any submittal without a submittal classification and submittal reviewer identifier is considered to be For Information Only (FIO). The submittal register generated by the Government Resident Management System (RMS) Software is used for tracking construction submittals and is referred to as ENG Form 4288 (RMS). The Contractor shall maintain an ENG Form 4288 (RMS) for the project in accordance with the attached ENG Form 4288 (RMS) Instructions. The Contractor will be furnished one (1) set of ENG Forms 4288 (RMS) at the preconstruction conference. Much of the same information contained on the attached submittal register will be included on the ENG Forms 4288 (RMS) furnished to the Contractor. The Contractor shall complete the appropriate columns as indicated on the attached ENG Form 4288 (RMS) Instructions and return to the Contracting Officer for approval within 20 calendar days after the preconstruction conference. The ENG Form 4288 (RMS) will become a part of the contract after approval. The TRANSMITTAL NUMBER AND ITEM NUMBER shall be left blank for use later to record the respective transmittal and item number corresponding to those listed on the transmittal form entitled: "TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE" (ENG Form 4025). The approved ENG Form 4288 (RMS) will become the scheduling document and will be used to control submittals throughout the life of the contract. The ENG Form 4288 (RMS) and the progress schedules shall be coordinated.

1.9 SCHEDULING

Submittals covering component items forming a system or items that are interrelated shall be scheduled to be coordinated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled. Adequate time (a minimum of 20 calendar days exclusive of mailing time) shall be allowed and shown on the register for review and approval. No delay damages or time extensions will be allowed for time lost in late submittals.

1.10 TRANSMITTAL FORM (ENG FORM 4025)

The sample transmittal form (ENG Form 4025) attached to this section shall be used for submitting both Government approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms will be furnished to the Contractor. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. Special care shall be exercised to ensure proper listing of the specification paragraph and/or sheet number of the contract drawings pertinent to the data submitted for each item.

1.11 SUBMITTAL PROCEDURES

Submittals shall be made as follows:

1.11.1 Procedures

1.11.1.1 "G-ED or G-AE" Submittals

All items listed as "G-ED" or "G-AE" submittals in the various sections or on the Submittal Register shall be mailed directly to the addressee shown below as directed. For each submittal, a completed information copy of the attached transmittal form shall also be mailed to the Area Engineer .

Technical Reviewer

Engineering Division (ED)
Attn: CENWO-ED-DI
U.S. Army Engineer District, Omaha
106 South 15th Street
Omaha, NE 68102-1618

Each required submittal which is in the form of a drawing shall be submitted as seven (7) prints of the drawing. Drawing prints shall be either blue or black line permanent-type prints on a white background or blueprint and shall be sufficiently clear and suitable for making legible copies.

All catalog and descriptive data shall be submitted in seven (7) copies. Catalog cuts and other descriptive data which have more than one model, size, or type or which shows optional equipment shall be clearly marked to show the model, size, or type and all optional equipment which is proposed for approval. Submittals on component items forming a system or that are interrelated shall be submitted at one time as a single submittal in order to demonstrate that the items have been properly coordinated and will function as a unit.

1.11.1.2 "G-RE" and FIO Submittals

Except as noted below, data for all items listed as "G-RE" Submittals in the various sections shall be submitted in five (5) copies to the Area Engineer using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, shall be submitted to the Area or Resident Engineer (as directed) accompanied by five (5) copies of the transmittal form.

Except as noted below, data for all items listed as FIO Submittals in the various sections shall be submitted in three (3) copies to the Area Engineer using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, shall be submitted to the Area or Resident Engineer (as directed) accompanied by three (3) copies of the transmittal form. The Government has the option to review any FIO submittal.

1.11.1.3 Certificates of Compliance

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

1.11.1.4 Purchase Orders

Copies of purchase orders shall be furnished to the Contracting Officer when the Contractor requests assistance for expediting deliveries of equipment or materials, or when requested by the Contracting Officer for the purpose of quality assurance review. Each purchase order issued by the Contractor or his subcontractors for materials and equipment to be incorporated into the project shall (1) be clearly identified with the applicable DA contract number, (2) carry an identifying number, (3) be in sufficient detail to identify the material being purchased, (4) indicate a definite delivery date, and (5) display the DMS priority rating, if applicable.

1.11.1.5 Operation and Maintenance Instructions and/or Manuals

Where required by various technical sections, operations and maintenance instructions and/or manuals with parts lists included shall be provided by the Contractor in quintuplicate, unless otherwise specified, and shall be assembled in three-ring binders with index and tabbed section divider and having a cover indicating the contents by equipment or system name and project title and shall be submitted for approval to the Contracting Officer 90 days prior to final tests of mechanical and electrical systems, unless otherwise specified. Each operation and maintenance manual shall contain a copy of all warranties and a list of local service representatives required by Section 01200 Warranty of Construction. If field testing requires these copies to be revised, they shall be updated and resubmitted for approval within 10 calendar days after completion of tests. The Operations and Maintenance Instructions and/or Manuals shall be shown as a separate activity on the Contractor prepared construction schedule bar chart or network analysis system.

1.11.1.6 Interior/Exterior Finish Sample and Data

All submittals regarding color boards (Section 09915 COLOR SCHEDULE) for interior finish samples and data shall be submitted concurrently and all submittals for exterior finish samples and data shall be submitted concurrently. These color boards are in addition to the samples required under the specific technical specifications listed as "samples".

1.11.2 Deviations

For submittals which include proposed deviations requested by the Contractor, the column "variation" of ENG Form 4025 shall be checked. The Contractor shall set forth in writing the reason for any deviations and annotate such deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

1.12 CONTROL OF SUBMITTALS

The Contractor shall carefully control his procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

1.13 GOVERNMENT APPROVED SUBMITTALS

Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so

stamped and dated.

1.13.1 "G-AE" or "G-ED" Submittals

The drawing print and five (5) sets of all catalog data and descriptive literature and drawing prints will be retained by the Contracting Officer and two (2) sets of catalog data and descriptive literature and drawing prints will be returned to the Contractor.

1.13.2 "G-RE" Submittals

Two (2) copies of "G-RE" submittals for approval will be returned to the Contractor except for samples, test cylinders, and O&M manuals for which two (2) copies of the transmittal form only will be returned to the Contractor.

1.14 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Review by 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.

1.15 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements shall be similar to the following. The stamp shall be affixed and filled out on the back of each ENG Form 4025.

<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>

INSTRUCTIONS
ENG FORM 4288 (RMS)

1. The Contractor shall utilize the ENG Form 4288 (RMS) generated by the Government Residential Management System (RMS) software for tracking construction submittals. The Submittal Register information, columns (c) thru (f) from the Submittal Forms furnished with this solicitation, [will be utilized by the Government] to generate the ENG Form 4288 (RMS). [The Government will furnish the Contractor a hard copy of the ENG Form 4288 (RMS) at the preconstruction conference.]. The ENG Form 4288 (RMS) includes the following items and parties responsible for completing the information required on the ENG Form 4288 (RMS). The subparagraph headings below do not correspond to the Submittal Register column headings.

a. Activity Number: will be provided by the Contractor from his Network Analysis, if required, and when a network analysis is accepted.

b. Transmittal Number and Item Number: will be provided by the Contractor from ENG Form 4025 for each item.

c. Specification Paragraph Number: will be provided by the Government from the Submittal Register from column entitled "Specification Paragraph Number".

d. Description of Submittal: will be provided by the Government from the Submittal Register from column entitled "Description of Item Submitted".

e. Type of Submittal: will be provided by the Government from the Submittal Register from column entitled "Type of Submittal" or "Description of Item Submitted".

f. Classification: will be provided by the Government from the Submittal Register from column entitled "Classification".

g. Reviewing Office - Reviewer: will be provided by the Government from the Submittal Register from column entitled "Classification" or "Reviewer".

h. Contractor Schedule Dates: the Contractor will provide schedule dates for

"Submit Needed By" (Date the Contractor expects to submit an item. It is the Contractors responsibility to calculate the lead time needed for the government approval. Note if resubmittal is required it is the Contractors responsibility to make all adjustments necessary to meet the contract completion date.)

"Approval Needed By" (date the Contractor can receive approval and still obtain the material by need date.), and

"Material Needed By" (date that the material is needed at the site. If there is a network analysis it should reflect that date on the analysis.)

i. Contractor Action: Includes the following items: "Code" and "Submit to the Corps". These items will be completed by the Contractor. The action codes will be one of the following:

A - Approved as submitted.

- B - Approved, except as noted.
- G - Other (specify)

j. Government Action: This item includes a Government Action "Code" and "Date" and is reserved for Government use. The Government reserves the right to review any submittal for contract compliance. Receipt of an Action Code "F - Receipt Acknowledged" or failure of the Contractor to receive an Action Code by the Government, does not mean that the submittal is in compliance with the contract requirements. When used by the Government, the action code will be one of the following:

- A - Approved as submitted.
- B - Approved except as noted on drawings.
- C - Approved, except as noted on drawings. Refer to attached ____ sheet resubmission required.
- D - Will be returned by separate correspondence.
- E - Disapproved (See Attached).
- F - Receipt Acknowledged.
- Fx - Receipt acknowledged, does not comply as noted with contract requirements.
- G - Other (specify).

2. Reviewer Abbreviation code will be as follows;

- G-ED, G-AE or G-RE - Government Approved
- For Information Only - Any submittal without a Government Approved abbreviation code.

INSTRUCTIONS
ENG FORM 4025

1. DATE at the top of form will be the date submitted to the Government which is to be completed by the Contractor.
2. TRANSMITTAL NO. Each new transmittal (i.e. [G-AE,] [G-ED,] G-RE or FIO) shall be numbered consecutively for each specification section in the space provided in "Transmittal No.". This number will be the identifying symbol for each submittal. Example: "15400A-001", "15895A-001" "15895A-002", "16415A-001", etc. For each new submittal or for a resubmittal, the appropriate box must be marked. Resubmittals must be designated by their original sequential number followed by an ".1", ".2", etc. for each sequential resubmittal. Example: "15895A-001.1" (previous submittal No. 15895A-001).
3. TO: Box will contain the name and address of the office which will review the submittal (as designated by the Contracting Officer).
4. FROM: Box will be the name and address of the Contractor. Contractor is to complete this box.
5. CONTRACT NO. box will contain the Contractors construction contract number (e.g., DACXXX-XX-C-XXXX).
6. CHECK ONE box
 - a. CHECK ONE box (for transmittal/ retransmittal) will be completed by the Contractor with one box marked. If a resubmittal is provided last transmittal number will be added.
 - b. CHECK ONE box will be completed by the Contractor with one box marked for the submittal type.
7. SPECIFICATION SECTION NO. box will be completed by the Contractor. The number will be the five digit number found in the specifications. No more than one section will be covered with each transmittal.
8. PROJECT TITLE AND LOCATION box will be completed by the Contractor.
9. Column a, will be completed by the Contractor and will contain a different number for each item submitted in that transmittal. Once a number is assigned to an item it will remain the same even if there is a resubmittal.
10. Column b, will be completed by the Contractor. The description of each item on this form will be the descriptions provided on the submittal register. The Contractor shall submit each submittal register item all at once on one transmittal if possible. If a submittal register item can not be submitted all at once Contractor should note that in the remarks box.
11. Column c, will be completed by the Contractor. The information will be the appropriate submittal description number as described this Section or shown on the submittal register (e.g. SD-XX).
12. Column d, will be completed by the Contractor. The number of copies will be determined by the Contractor after review of submittal register for the classification of the item and after review of paragraph: SUBMITTAL

PROCEDURES of this Section.

13. Column e, will be completed by the Contractor. The Contractor shall state all applicable paragraph numbers.

14. Column f, will be completed by the Contractor. The Contractor shall state all applicable drawing sheet numbers.

15. Column g, will be completed by the Contractor. The action codes will be one of the following:

- A - Approved as submitted.
- B - Approved, except as noted.
- G - Other (specify)

16. Column h, will be completely by the Contractor. A check shall be placed in this 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".

17. Column i, is reserved for Government use and may or may not be provided. When used by the Government, the action code will be one of the following:

- A - Approved as submitted.
- B - Approved except as noted on drawings.
- C - Approved, except as noted on drawings. Refer to attached ____ sheet resubmission required.
- D - Will be returned by separate correspondence.
- E - Disapproved (See Attached).
- F - Receipt Acknowledged.
- Fx - Receipt acknowledged, does not comply as noted with contract requirements.
- G - Other (specify).

18. REMARKS box self explained.

19. Contractor Quality Control Manager must provide name and sign all Eng Form 4025 certifying conformance. In the space for the name and signature, also include a phone number where the CQC Manager may be reached.

20. Section II will be completed by the Government. Contractor is not to write in this space.

See reverse side of ENG Form 4025 for additional instructions.

-- End of Section --

SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION						CONTRACTOR											
California Bend, Channel Restoration, Missouri River, NE																	
ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH	GOVT CLASSIFICATION	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION		APPROVING AUTHORITY					REMARKS	
						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE FWD TO APPR AUTH/	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION		MAILED TO CONTR/
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01200	SD-01 Preconstruction Submittals														
			Proposed Methods of Operation		G RE												
			Progress Charts	1.10	G RE												
			SD-02 Shop Drawings														
			Care of Water	1.4	G RE												
			SD-11 Closeout Submittals														
			Warranty of Construction														
		01355A	SD-08 Manufacturer's Instructions														
			Environmental Protection Plan	1.8	G RE												
		01400	SD-01 Preconstruction Submittals														
			Accident Prevention Plan		G RE												
			SD-07 Certificates														
			Qualifications		G RE												
		01562	SD-05 Design Data														
			Notice of Intent	3.2.1													
			Notice of Start-up of Construction Activity	3.2.2													
			Storm Water Pollution Prevention Plan	3.2.3													
			Notice of Completion of Construction Activity	3.2.5													
			SD-06 Test Reports														
			Records	3.2.4													
		02000	SD-01 Preconstruction Submittals														
			Location of Material Sources for Stone		G RE												

SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION						CONTRACTOR											
California Bend, Channel Restoration, Missouri River, NE																	
ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH	GOVT CLASSIFICATION	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION		APPROVING AUTHORITY					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)
		02000	Letter of Clearance	3.1.1	G RE												
			SD-09 Manufacturer's Field Reports														
			Tests, service records, and results	3.1.4	G RE												
			Samples of Stone	3.1.2	G RE												
		02110	SD-01 Preconstruction Submittals														
			Disposal Facility		G RE												
		02210	SD-06 Test Reports														
			Field Testing Control	3.9													
		02482	SD-02 Shop Drawings														
			Submerged pipeline														
		02500	SD-03 Product Data														
			Waybills and Delivery Tickets		G RE												
			SD-06 Test Reports														
			Sampling and Testing	3.5	G RE												
		02630	SD-03 Product Data														
			Placing Pipe	3.3													
			SD-07 Certificates														
			Materials														
			Determination of Density	3.5.2													
		02921	SD-03 Product Data														
			Equipment		G RE												
			Delivery	1.4.1	G RE												
			Finished Grade	3.2	G RE												
			Quantity Check	3.2.2.1	G RE												
			Seed Establishment Period	3.5	G RE												

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TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES OR MANUFACTURE'S CERTIFICATES OF COMPLIANCE	DATE	TRANSMITTAL NO.
---	------	-----------------

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS (This section to 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 RE-SUBMITTAL OF TRANSMITTAL NO. _____
-----	-------	--------------	---

SPECIFICATION SECTION NO.	PROJECT TITLE AND LOCATION	CHECK ONE: <input type="checkbox"/> FIO G-RE <input type="checkbox"/> G-ED G-AE
---------------------------	----------------------------	--

ITEM NO.	DESCRIPTION OF ITEM SUBMITTED <i>(Type, size, model, etc.)</i>	MFG. OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO.	NO of COPIES	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE	VARIATION (SEE #6)	FOR CE USE CODE
				SPEC. PARA.	DWG. SHEET			
a.	b.	c.	d.	e.	f.	g.	h.	i.

REMARKS:	<p>I certify that the above submittal items have been reviewed in detail and are correct and in strict compliance with the contract drawings and specifications except as otherwise stated.</p> <p>_____ NAME, PHONE NUMBER, AND SIGNATURE OF CONTRACTOR QC</p>
----------	---

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED <i>(List by Item No.)</i>	NAME, TITLE, AND SIGNATURE OF APPROVING AUTHORITY	DATE
---	---	------

INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.
2. Each new transmittal shall be numbered consecutively for each specification section in the space provided in "Transmittal No.". This number, in addition to the contract number, will be the identifying symbol for each submittal. Example: "15400A-001", "15895A-001" "15895A-002", "16415A-001", etc. For each new submittal or for a resubmittal, the appropriate box must be marked. Resubmittals must be designated by their original sequential number followed by an ".1", ".2", etc. for each sequential resubmittal. Example: "15895A-001.1" (previous submittal No. 15895A-001).
3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- | | |
|---|---|
| A -- Approved as submitted. | E -- Disapproved (See attached). |
| B -- Approved, except as noted on drawings. | F -- Receipt acknowledged. |
| C -- Approved, except as noted on drawings.
Refer to attached sheet resubmission required. | FX -- Receipt acknowledged, does not comply
as noted with contract requirements. |
| D -- Will be returned by separate correspondence. | G -- Other (Specify) |

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

(Reverse of CENWO-CD-Q SUBMITTAL FORM, IFB-1 (Omaha Version of ENG Form 4025-R))

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SECTION 01355A

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10/00

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-- End of Section Table of Contents --

SECTION 01355A

ENVIRONMENTAL PROTECTION
10/00

PART 1 GENERAL

Department of the Army Section 404 Authorization/Permit No.
 State of Iowa Section 401 Water Quality Certification
 State of Nebraska Section 401 Water Quality Certification
 US Department of Interior Letter dated 28 August 1995

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

33 CFR 328	Definitions
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 279	Standards for the Management of Used Oil
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
49 CFR 171 - 178	Hazardous Materials Regulations

ENGINEERING MANUALS (EM)

EM 385-1-1	(1996) U.S. Army Corps on Engineers Safety and Health Requirements Manual
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US ARMY CORPS OF ENGINEERS TECHNICAL REPORT

WETLAND MANUAL	Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1
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1.2 DEFINITIONS

1.2.1 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical,

or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

1.2.2 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during construction. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed of, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (i.e. methyl ethyl ketone, toluene etc.), waste thinners, excess paints, excess solvents, waste solvents, and excess pesticides, and contaminated pesticide equipment rinse water.

1.2.4 Land Application for Discharge Water

The term "Land Application" for discharge water implies that the Contractor shall discharge water at a rate which allows the water to percolate into the soil. No sheeting action, soil erosion, discharge into storm sewers, discharge into defined drainage areas, or discharge into the "waters of the United States" shall occur. Land Application shall be in compliance with all applicable Federal, State, and local laws and regulations.

1.2.5 Surface Discharge

The term "Surface Discharge" implies that the water is discharged with possible sheeting action and subsequent soil erosion may occur. Waters that are surface discharged may terminate in drainage ditches, storm sewers, creeks, and/or "waters of the United States" and would require a permit to discharge water from the governing agency.

1.2.6 Waters of the United States

All waters which are under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

1.2.7 Wetlands

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Official determination of whether or not an area is classified as a wetland must be done in accordance with WETLAND MANUAL.

1.3 GENERAL REQUIREMENTS

The Contractor shall minimize environmental pollution and damage that may occur as the result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract. The Contractor shall comply with all applicable environmental Federal, State, and local laws and regulations. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

1.4 SUBCONTRACTORS

The Contractor shall ensure compliance with this section by subcontractors.

1.5 PAYMENT

No separate payment will be made for work covered under this section. The Contractor shall be responsible for payment of fees associated with environmental permits, application, and/or notices obtained by the Contractor. All costs associated with this section shall be included in the contract price. The Contractor shall be responsible for payment of all fines/fees for violation or non-compliance with Federal, State, Regional and local laws and regulations.

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. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-08 Statements

Environmental Protection Plan; G-RE

The environmental protection plan.

1.7 ENVIRONMENTAL COORDINATION, PERMITS, NOTICES, REVIEWS AND/OR APPROVALS

The Contractor shall be responsible for contacting the appropriate Federal, State, Regional, and local environmental agencies to identify all required environmental permits (construction and operating), notices, reviews, and approvals required for the project. Prior to construction starting for any phase, the Contractor shall assure that all permits and/or approvals are received and copies are submitted to the Contracting Officer. The Contractor shall be responsible for any contract delays resulting from failure to obtain environmental permits, notices, reviews and/or approvals when required.

1.7.1 Applications, Supporting Documents, and Fees

The Contractor shall obtain and complete all environmental permit applications and notices. The Contractor shall be responsible for all fees associated with the permits, applications, reviews, approvals, and notices.

1.7.2 California Bend Permits, Notices, Reviews, and/or Approvals

The following is a listing of permits, notices, reviews, and/or approvals

which **may be** required for this project. This listing and requirements **are not** to be considered all-inclusive by the Contractor, but is provided as information that may be used in successfully accomplishing the environmental compliances.

- a. In the State of Nebraska, **EPA** has authority for the National Pollutant Discharge Elimination System (NPDES) program. **If** construction activities results in disturbance of 5 acres of land or more, coverage under the EPA Storm Water General Permit For Construction Activities is required. NOTE: The rule on the amount of acres disturbed changes from 5 acres to 1 acre on March 3, 2003. The Contractor shall be responsible for editing and applying Specification Section 01562 (FEDERAL FACILITIES COLORADO) NPDES PERMIT REQUIREMENTS FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES.

1.8 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing construction activities or delivery of materials to the site, the Contractor shall submit an Environmental Protection Plan for review and approval by the Contracting Officer. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during construction. Issues of concern shall be defined within the Environmental Protection Plan as outlined in this section. The Contractor shall address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but which the Contractor considers necessary, shall be identified and discussed after those items formally identified in this section. Prior to submittal of the Environmental Protection Plan, the Contractor shall meet with the Contracting Officer for the purpose of discussing the implementation of the initial Environmental Protection Plan; possible subsequent additions and revisions to the plan including any reporting requirements; and methods for administration of the Contractor's Environmental Plans. The Environmental Protection Plan shall be current and maintained on site by the Contractor.

1.8.1 Compliance

No requirement in this Section shall be construed as relieving the Contractor of any applicable Federal, State, and local environmental protection laws and regulations. During Construction, the Contractor shall be responsible for identifying, implementing, and submitting for approval any additional requirements to be included in the Environmental Protection Plan.

1.8.2 Contents

The environmental protection plan shall include, but shall not be limited to, the following:

- a. Name(s) of person(s) within the Contractor's organization who is(are) responsible for ensuring adherence to the Environmental Protection Plan.
- b. Name(s) and qualifications of person(s) responsible for manifesting hazardous waste to be removed from the site, if applicable.
- c. Name(s) and qualifications of person(s) responsible for training

the Contractor's environmental protection personnel.

d. Description of the Contractor's environmental protection personnel training program.

e. An erosion and sediment control plan which identifies the type and location of the erosion and sediment controls to be provided. The plan shall include monitoring and reporting requirements to assure that the control measures are in compliance with the erosion and sediment control plan, Federal, State, and local laws and regulations. A Storm Water Pollution Prevention Plan (SWPPP) may be substituted for this plan.

f. Drawings showing locations of proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials including methods to control runoff and to contain materials on the site.

g. Traffic control plans including measures to reduce erosion of temporary roadbeds by construction traffic, especially during wet weather. Plan shall include measures to minimize the amount of mud transported onto paved public roads by vehicles or runoff.

h. Work area plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas including methods for protection of features to be preserved within authorized work areas.

i. Drawing showing the location of borrow areas.

j. The Spill Control plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by 40 CFR 68, 40 CFR 302, 40 CFR 355, and/or regulated under State or Local laws and regulations. The Spill Control Plan supplements the requirements of EM 385-1-1. This plan shall include as a minimum:

1. The name of the individual who will report any spills or hazardous substance releases and who will follow up with complete documentation. This individual shall immediately notify the Contracting Officer and the local Fire Department in addition to the legally required Federal, State, and local reporting channels (including the National Response Center 1-800-424-8802) if a reportable quantity is released to the environment. The plan shall contain a list of the required reporting channels and telephone numbers.

2. The name and qualifications of the individual who will be responsible for implementing and supervising the containment and cleanup.

3. Training requirements for Contractor's personnel and methods of accomplishing the training.

4. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.

5. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.
6. The methods and procedures to be used for expeditious contaminant cleanup.
- k. A non-hazardous solid waste disposal plan identifying methods and locations for solid waste disposal including clearing debris. The plan shall include schedules for disposal. The Contractor shall identify any subcontractors responsible for the transportation and disposal of solid waste. Licenses or permits shall be submitted for solid waste disposal sites that are not a commercial operating facility. Evidence of the disposal facility's acceptance of the solid waste shall be attached to this plan during the construction.
- l. A recycling and solid waste minimization plan with a list of measures to reduce consumption of energy and natural resources. The plan shall detail the Contractor's actions to comply with and to participate in Federal, State, Regional, and local government sponsored recycling programs to reduce the volume of solid waste at the source.
- m. An air pollution control plan detailing provisions to assure that dust, debris, materials, trash, etc., do not become air borne and travel off the project site.
- n. A contaminant prevention plan that: identifies potentially hazardous substances to be used on the job site; identifies the intended actions to prevent introduction of such materials into the air, water, or ground; and details provisions for compliance with Federal, State, and local laws and regulations for storage and handling of these materials. In accordance with EM 385-1-1, a copy of the Material Safety Data Sheets (MSDS) and the maximum quantity of each hazardous material to be on site at any given time shall be included in the contaminant prevention plan. As new hazardous materials are brought on site or removed from the site, the plan shall be updated.
- o. A waste water management plan that identifies the methods and procedures for management and/or discharge of waste waters which are directly derived from construction activities, such as concrete curing water, clean-up water, dewatering of ground water, disinfection water, hydrostatic test water, and water used in flushing of lines. If a settling/retention pond is required, the plan shall include the design of the pond including drawings, removal plan, and testing requirements for possible pollutants. If land application will be the method of disposal for the waste water, the plan shall include a sketch showing the location for land application along with a description of the pretreatment methods to be implemented. If surface discharge will be the method of disposal, a copy of the permit and associated documents shall be included as an attachment prior to discharging the waste water.
- p. A historical, archaeological, cultural resources biological resources and wetlands plan that defines procedures for identifying and protecting historical, archaeological, cultural resources, biological resources and wetlands known to be on the project site: and/or identifies procedures to be followed if historical archaeological, cultural resources, biological resources and wetlands not previously

known to be on site or in the area are discovered during construction. The plan shall include methods to assure the protection of known or discovered resources and shall identify lines of communication between Contractor personnel and the Contracting Officer.

q. A pesticide treatment plan shall be included and updated, as information becomes available. The plan shall include: sequence of treatment, dates, times, locations, pesticide trade name, EPA registration numbers, authorized uses, chemical composition, formulation, original and applied concentration, application rates of active ingredient (i.e. pounds of active ingredient applied), equipment used for application and calibration of equipment. The Contractor is responsible for Federal, State, Regional and Local pest management record keeping and reporting requirements as well as any additional specific requirements.

1.8.3 Appendix

Copies of all environmental permits, permit application packages, approvals to construct, notifications, certifications, reports, and termination documents shall be attached, as an appendix, to the Environmental Protection Plan.

1.9 PROTECTION FEATURES

This paragraph supplements the Contract Clause PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS. Prior to start of any on site construction activities, the Contractor and the Contracting Officer shall make a joint condition survey. Immediately following the survey, the Contractor shall prepare a brief report including a plan describing the features requiring protection under the provisions of the Contract Clauses, which are not specifically identified on the drawings as environmental features requiring protection along with the condition of trees, shrubs and grassed areas immediately adjacent to the site of work and adjacent to the Contractor's assigned storage area and access route(s), as applicable. This survey report shall be signed by both the Contractor and the Contracting Officer upon mutual agreement as to its accuracy and completeness. The Contractor shall protect those environmental features included in the survey report and any indicated on the drawings, regardless of interference which their preservation may cause to the Contractor's work under the contract.

1.10 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

Any deviations, requested by the Contractor, from the drawings, plans and specifications which may have an environmental impact will be subject to approval by the Contracting Officer and may require an extended review, processing, and approval time. The Contracting Officer reserves the right to disapprove alternate methods, even if they are more cost effective, if the Contracting Officer determines that the proposed alternate method will have an adverse environmental impact.

1.11 NOTIFICATION

The Contracting Officer will notify the Contractor in writing of any observed noncompliance with Federal, State or local environmental laws or regulations, permits, and other elements of the Contractor's Environmental Protection plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take

such action when approved by the Contracting Officer. The Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the Contracting Officer 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 ENVIRONMENTAL PERMITS AND COMMITMENTS

This paragraph supplements the Contractor's responsibility under the contract clause "PERMITS AND RESPONSIBILITIES" to the extent that the Government has obtained the following attached permit/certifications:

- a. Department of the Army Section 404 Authorization/Permit
- b. State of Iowa Section 401 Water Quality Certification
- c. State of Nebraska Section 401 Water Quality Certification

The Contractor shall comply with the terms and conditions of the above permits and certifications including all notifications. The Contractor shall be responsible for all other environmental permits and/or approvals required by Federal, State, and local laws and regulations.

3.2 LAND RESOURCES

The Contractor shall confine all activities to areas defined by the drawings and specifications. Prior to the beginning of any construction, the Contractor shall identify any land resources to be preserved within the work area. Except in areas indicated on the drawings or specified to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without approval. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. The Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs. Stone, soil, or other materials displaced into uncleared areas shall be removed by the Contractor.

3.2.1 Work Area Limits

Prior to commencing construction activities, the Contractor shall mark the areas that need not be disturbed under this contract. Isolated areas within the general work area which are not to be disturbed shall be marked or fenced. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, any markers shall be visible in the dark. The Contractor's personnel shall be knowledgeable of the purpose for marking and/or protecting particular objects.

3.2.2 Landscape

Trees, shrubs, vines, grasses, land forms and other landscape features indicated and defined on the drawings to be preserved shall be clearly identified by marking, fencing, or wrapping with boards, or any other approved techniques. The Contractor shall restore landscape features

damaged or destroyed during construction operations outside the limits of the approved work area.

3.2.3 Erosion and Sediment Controls

The Contractor shall be responsible for providing erosion and sediment control measures in accordance with Federal, State, and local laws and regulations. The erosion and sediment controls selected and maintained by the Contractor shall be such that water quality standards are not violated as a result of the Contractor's construction activities. The area of bare soil exposed at any one time by construction operations should be kept to a minimum. The Contractor shall construct or install temporary and permanent erosion and sediment control best management practices (BMPs). BMPs may include, but not be limited to, vegetation cover, stream bank stabilization, slope stabilization, silt fences, construction of terraces, interceptor channels, sediment traps, inlet and outfall protection, diversion channels, and sedimentation basins. Any temporary measures shall be removed after the area has been stabilized.

3.2.4 Contractor Facilities and Work Areas

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in areas designated on the drawings or as directed by the Contracting Officer. Temporary movement or relocation of Contractor facilities shall be made only when approved. Erosion and sediment controls shall be provided for on-site borrow and spoil areas to prevent sediment from entering nearby waters. Temporary excavation and embankments for plant and/or work areas shall be controlled to protect adjacent areas.

3.3 WATER RESOURCES

The Contractor shall monitor construction activities to prevent pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation unless otherwise indicated. All water areas affected by construction activities shall be monitored by the Contractor. For construction activities immediately adjacent to impaired surface waters, the Contractor shall be capable of quantifying sediment or pollutant loading to that surface water when required by State or Federally issued Clean Water Act permits.

3.3.1 Cofferdams, Diversions, and Dewatering Operations

Construction operations for dewatering, removal of cofferdams, tailrace excavation, and tunnel closure shall be controlled at all times to maintain compliance with existing State water quality standards and designated uses of the surface water body. The Contractor shall comply with the State of Iowa and Nebraska water quality standards and anti-degradation provisions and the Clean Water Act Section 404.

3.3.2 Stream Crossings

Stream crossings shall allow movement of materials or equipment without violating water pollution control standards of the Federal, State, and local governments.

3.3.3 Wetlands

The Contractor shall not enter, disturb, destroy, or allow discharge of

contaminants into any wetlands except as authorized herein. The Contractor shall be responsible for the protection of wetlands in accordance with paragraph ENVIRONMENTAL PERMITS, REVIEWS, AND APPROVALS. Authorization to enter specific wetlands identified shall not relieve the Contractor from any obligation to protect other wetlands within, adjacent to, or in the vicinity of the construction site and associated boundaries.

3.4 AIR RESOURCES

Equipment operation, activities, or processes performed by the Contractor shall be in accordance with all Federal and State air emission and performance laws and standards.

3.4.1 Particulates

Dust particles; aerosols and gaseous by-products from construction activities; and processing and preparation of materials, such as from asphaltic batch plants; shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, spoil areas, borrow areas, and other work areas within or outside the project boundaries free from particulates which would cause the Federal, State, and local air pollution standards to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish these tasks. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs. The Contractor shall comply with all State and local visibility regulations.

3.4.2 Odors

Odors from construction activities shall be controlled at all times. The odors shall not cause a health hazard and shall be in compliance with State regulations and/or local ordinances.

3.4.3 Sound Intrusions

The Contractor shall keep construction activities under surveillance and control to minimize environment damage by noise. The Contractor shall comply with the provisions of the State of Iowa and Nebraska rules.

3.4.4 Burning

Burning shall be prohibited on the project site.

3.5 CHEMICAL MATERIALS MANAGEMENT AND WASTE DISPOSAL

Disposal of wastes shall be as directed below, unless otherwise specified in other sections and/or shown on the drawings.

3.5.1 Solid Wastes

Solid wastes (excluding clearing debris) shall be placed in containers which are emptied on a regular schedule. Handling, storage, and disposal shall be conducted to prevent contamination. Segregation measures shall be

employed so that no hazardous or toxic waste will become co-mingled with solid waste. The Contractor shall transport solid waste off Government property and dispose of it in compliance with Federal, State, and local requirements for solid waste disposal. A Subtitle D RCRA permitted landfill shall be the minimum acceptable off-site solid waste disposal option. The Contractor shall verify that the selected transporters and disposal facilities have the necessary permits and licenses to operate.

3.5.2 Chemicals and Chemical Wastes

Chemicals shall be dispensed ensuring no spillage to the ground or water. Periodic inspections of dispensing areas to identify leakage and initiate corrective action shall be performed and documented. This documentation will be periodically reviewed by the Government. Chemical waste shall be collected in corrosion resistant, compatible containers. Collection drums shall be monitored and removed to a staging or storage area when contents are within 6 inches of the top. Wastes shall be classified, managed, stored, and disposed of in accordance with Federal, State, and local laws and regulations.

3.5.3 Contractor Generated Hazardous Wastes/Excess Hazardous Materials

Hazardous wastes are defined in 40 CFR 261, or are as defined by applicable State and local regulations. Hazardous materials are defined in 49 CFR 171 - 178. The Contractor shall, at a minimum, manage and store hazardous waste in compliance with 40 CFR 262. The Contractor shall take sufficient measures to prevent spillage of hazardous and toxic materials during dispensing. The Contractor shall segregate hazardous waste from other materials and wastes, shall protect it from the weather by placing it in a safe covered location, and shall take precautionary measures such as berming or other appropriate measures against accidental spillage. The Contractor shall be responsible for storage, describing, packaging, labeling, marking, and placarding of hazardous waste and hazardous material in accordance with 49 CFR 171 - 178, State, and local laws and regulations.

The Contractor shall transport Contractor generated hazardous waste off Government property within 60 days in accordance with the Environmental Protection Agency and the Department of Transportation laws and regulations. The Contractor shall dispose of hazardous waste in compliance with Federal, State and local laws and regulations. Spills of hazardous or toxic materials shall be immediately reported to the Contracting Officer. Cleanup and cleanup costs due to spills shall be the Contractor's responsibility. The disposition of Contractor generated hazardous waste and excess hazardous materials are the Contractor's responsibility.

3.5.4 Fuel and Lubricants

Storage, fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants and oil shall be managed and stored in accordance with all Federal, State, Regional, and local laws and regulations. Used lubricants and used oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with 40 CFR 279, State, and local laws and regulations. Storage of fuel on the project site shall be accordance with all Federal, State, and local laws and regulations.

3.5.5 Waste Water

Disposal of waste water shall be as specified below.

- a. Waste water from construction activities, such as on site material processing, concrete curing, foundation and concrete clean-up, water used in concrete trucks, forms, etc. shall not be allowed to enter water ways or to be discharged prior to being treated to remove pollutants. The Contractor shall dispose of the construction related waste water off-Government property in accordance with all Federal, State, Regional and Local laws and regulations or by collecting and placing it in a retention pond where suspended material can be settled out and/or the water can evaporate to separate pollutants from the water. The site for the retention pond shall be coordinated and approved with the Contracting Officer. The residue left in the pond prior to completion of the project shall be removed, tested, and disposed off-Government property in accordance with Federal, State, and local laws and regulations. The area shall be backfilled to the original grade, top-soiled and seeded/sodded.
- b. For discharge of ground water, the Contractor shall discharge in accordance with all Federal, State, Regional, and/or Local laws and regulations.

3.6 RECYCLING AND WASTE MINIMIZATION

The Contractor shall participate in State and local government sponsored recycling programs. The Contractor is further encouraged to minimize solid waste generation throughout the duration of the project.

3.7 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

If during excavation or other construction activities any previously unidentified or unanticipated historical, archaeological, and cultural resources are discovered or found, all activities that may damage or alter such resources shall be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rock or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human historical activities. Upon such discovery or find, the Contractor shall immediately notify the Contracting Officer so that the appropriate authorities may be notified and a determination 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 impact to or the destruction of these resources. The Contractor shall secure the area and prevent employees or other persons from trespassing on, removing, or otherwise disturbing such resources.

3.8 BIOLOGICAL RESOURCES

The Contractor shall minimize interference with, disturbance to, and damage to fish, wildlife, and plants including their habitat. The Contractor shall be responsible for the protection of threatened and endangered animal and plant species including their habitat in accordance with Federal, State, Regional, and local laws and regulations. The following is a list of threatend and endangered species known in the area.

Peregrine Falcon. The peregrine falcon is a fast flying bird. It is a falcon with blue-gray above, pale with dark bars below and distinctive black hood and ranges in length from 16-20 inches. These birds migrate

through Nebraska utilizing open areas such as wetlands, grasslands, and croplands from late April to early May and then again in September and October each year. Their preferred roost and nesting area are on rocky cliffs or bluffs near rivers and lakes. There have no falcon sightings recorded for this project site but they probably migrate through this area.

b. Interior Least Tern. This bird is the smallest of the North American terns. Adults are gray above with black cap and nape, white forehead, orange-yellow bill with dark tip, white underparts and orange-yellow legs. Juvenile least terns are pinkish-buff above with brownish U-shaped markings, dusky crown, and a dark shoulder bar on the wings. This shorebird prefers to nest in colonies on unvegetated and sparsely vegetated sandbars. Primary nesting period of terns is from mid-May to mid-August. There are no known colonies at this project site.

c. Piping Plover. This 7 1/4 inch bird is very pale above, with orange legs and a conspicuous white rump in flight. The plover likes to nest on unvegetated and sparsely vegetated sandbars. Primary nesting period for the plovers is from mid-May to mid-August. There are no known colonies at this project site.

d. American Burying Beetle. This is the largest North American carrion beetle, reaching a length of 1 to 1 1/2 inches. The beetle can be identified by its almost completely orange thorax and orange spots on its wing covers. Habitat for this species is not clearly defined. They appear to prefer well-drained soils with clay components and a well formed detritus layer. It is recommended a survey be done to determine the possible occurrence of the American Burying Beetle with the project site. The survey should be conducted during the months of June, July and August.

For further information about or assistance with the surveys for the beetle, we suggest that you contact Dr. Bret Ratcliff, Nebraska State Museum, W. 436 Nebraska Hall, University of Nebraska, Lincoln, NE 68588-0514, (402) 472-2614.

e. Pallid Sturgeon. The pallid sturgeon is a living descendant of an ancient group of Paleozoic fishes. They historically reside in larger, turbid, free-flowing warm water rivers. The pallid sturgeon have flattened, shovel-shaped snout, with a long, slender and completely armored body except for its belly. These fish are found in the Missouri River and the lower reaches of major tributaries. Potential effects on the pallid sturgeon should be considered whenever activities affect the hydrology of these rivers.

f. Bald Eagles
The Contractor shall be responsible for identifying and avoiding disturbing bald eagles which are roosting in the project area. Bald Eagles shall not be disturbed. The Government recommends avoiding roosting bald eagles by eliminating activity within 75 meters of the roosting bald eagle. However, this is a general recommendation, and may change dependant upon location, available cover, and concealment. It is the Contractor's responsibility to accurately determine appropriate distances to avoid disturbing the Bald Eagle. The Contractor shall ensure that his employees are able to identify bald eagles and shall avoid disturbing bald eagles.

3.9 PREVIOUSLY USED EQUIPMENT

The Contractor shall clean all previously used construction equipment prior to bringing it onto the project site. The Contractor shall ensure that the equipment is free from soil residuals, egg deposits from plant pests,

noxious weeds, and plant seeds. The Contractor shall consult with the USDA jurisdictional office for additional cleaning requirements.

3.10 MAINTENANCE OF POLLUTION FACILITIES

The Contractor shall maintain permanent and temporary pollution control facilities and devices for the duration of the contract or for that length of time construction activities create the particular pollutant.

3.11 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection and pollution control. The training and all additional meetings shall be document with the date, time, name of trainer, attendees of the training, and subjects covered. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel prior to commencing construction activities. Additional meetings shall be conducted for new personnel and when site conditions change. The training and meeting agenda shall include: methods of detecting and avoiding pollution; familiarization with statutory and contractual pollution standards; installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control; anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants; recognition and protection of archaeological sites, artifacts, wetlands, and endangered species and their habitat that are known to be in the area.

3.12 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all areas used for construction in accordance with Contract Clause: "Cleaning Up". The Contractor shall, unless otherwise instructed in writing by the Contracting Officer, obliterate all signs of temporary construction facilities such as haul roads, work area, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other vestiges of construction prior to final acceptance of the work. The disturbed area shall be graded, filled and the entire area seeded unless otherwise indicated.

-- End of Section --

STATE OF NEBRASKA



DEPARTMENT OF ENVIRONMENTAL QUALITY

Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

MAR 10 2000

Mike Johanns
Governor

Steven C. Rothe
CENWO-PM-AP
215 North 17th Street
Omaha, NE 68102

RE: State Certification for Section 404 Application NE 99-10336, Dredge California Bend and discharge excavated sediments into Missouri River, off Washington County, NE.

Dear Mr. Rothe:

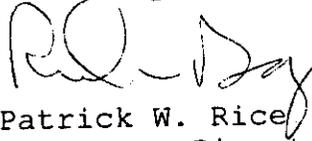
We have reviewed the information received regarding the above-referenced application and feel the activity will comply with Section 401 of the Clean Water Act of 1977, as amended by the Water Quality Act of 1987, subject to meeting the following condition:

The point of discharge shall be located downstream of the Blair Municipal Water Supply Intake facility, in the manner as described in the letter provided to us dated January 18, 2000, from yourself to Mr. Joel Christensen, Manager, Omaha Metropolitan Utilities District.

We therefore, by this letter, provide Section 401 Water Quality Certification. This certification does not constitute authorization to conduct your project. It is a statement of compliance with Surface Water Quality Standards only, which is one requirement to gain authorization from the U.S. Army Corps

of Engineers in the form of a Section 404 permit. If you have any questions, please feel free to call Terry Hickman on my staff, at (402) 471-2875.

Sincerely,


Patrick W. Rice
Assistant Director

TH

cc: John Peterson, US Army Corps of Engineers
Steve Anschutz, US Fish & Wildlife Service
Frank Albrecht, Nebraska Game & Parks Commission
Tom Taylor, US Environmental Protection Agency



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

April 12, 2001

U.S. Army Corps of Engineers – Omaha District
Attn: Steven C. Rothe
CENWO-PM-AP
106 S. 15th Street
Omaha, NE 68102

Dear Mr. Rothe:

After reviewing your request for an amended State 401 Water Quality Certification, the department has issued the enclosed Certification. Please read the attached conditions carefully before beginning work on the project.

While not a condition of this certification, you are reminded that applicants are responsible for obtaining an NPDES Storm Water Permit from the Department prior to initiating construction if the construction activity associated with the proposed project will result in the disturbance of five or more acres, total land area.

If you have any questions or comments about the certification or any conditions contained therein, please contact me at the address shown below, or call (515) 281-6615.

Sincerely,

Christine M. Schwake
Environmental Specialist
Water Quality Section

cc: Mr. John Peterson, Nebraska Regulatory Office – Wehrspann, 8901 South 154th Street, Suite 1,
Omaha, NE 68138-3621

✓ Ms. Katie Reed, Corps of Engineers - Omaha District, Environmental & Economics Section,
Planning Branch CENWO-PM-AE, 106 S. 15th Street, Omaha, NE 68102

SPECIAL CONDITIONS

1. Mechanically excavated material for the upper and lower chute areas shall be disposed of in an upland, non-wetland location. If chute is dredged, the spoils will be discharged to the river (but not to exceed the sediment carrying capacity of the river).
2. During the fifth year after project completion, provide a monitoring report to the Iowa Department of Natural Resources. As-built plans, information regarding the degree of success of the project, information regarding the effectiveness of the seeding and natural regeneration of the area, any erosion problems, and any plans for additional reseeding of necessary corrective actions.

STATE OF NEBRASKA SECTION 401 WATER QUALITY CERTIFICATION

SPECIAL CONDITIONS

Construction activities should employ controls to reduce the erosiveness of land adjacent to the water body. This includes revegetating disturbed areas and maintaining the controls.



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

January 31, 2002

U.S. Army Corps of Engineers – Omaha District
Attn: Steven C. Rothe
CENWO-PM-AP
106 S. 15th Street
Omaha, NE 68102

Dear Mr. Rothe:

After reviewing your request for an amended State 401 Water Quality Certification, the department has issued the enclosed Certification. Please read the attached conditions carefully before beginning work on the project.

While not a condition of this certification, you are reminded that applicants are responsible for obtaining an NPDES Storm Water Permit from the Department prior to initiating construction if the construction activity associated with the proposed project will result in the disturbance of five or more acres, total land area.

If you have any questions or comments about the certification or any conditions contained therein, please contact me at the address shown below, or call (515) 281-6615.

Sincerely,

A handwritten signature in cursive script that reads "Christine M. Schwake".

Christine M. Schwake
Environmental Specialist
Water Quality Section

cc: Mr. John Peterson, Nebraska Regulatory Office – Wehrspann, 8901 South 154th Street, Suite 1,
Omaha, NE 68138-3621

Ms. Katie Reed, Corps of Engineers - Omaha District, Environmental & Economics Section,
Planning Branch CENWO-PM-AE, 106 S. 15th Street, Omaha, NE 68102

IOWA DEPARTMENT OF NATURAL RESOURCES
AMENDED SECTION 401 WATER QUALITY CERTIFICATION

Certification issued to:

Effective: January 31, 2002

U.S. Army Corps of Engineers – Omaha District
Attn: Steven C. Rothe
CENWO-PM-AP
106 S. 15th Street
Omaha, NE 68102

Project certified: US Army Corps of Engineers, Joint Public Notice No. NE 1999-10336
State 401 Water Quality Certification, Application Log No.: 99-W-085-11-02-S

Proposal to discharge excavated sediments from the California Bend project into the Missouri River (River miles 648.4 to 650.1) in the Blair Nebraska area. Approximately 450,000 cubic yards of clay and sand would be deposited into the thalweg at a depth of approximately 11 feet. The Blair city water supply intake is approximately 500 feet beyond the downstream tip of the discharge site. Thus, discharge would be restricted to a certain distance, to be determined, upstream of the intake or downstream of the intake. Elutriate tests have been performed and no unusual metal or pesticide contaminant levels were detected. The Corps believes this project will have no substantial adverse effect on human use, water supplies, recreation, fisheries, esthetics, or protected areas.

Water quality use designation:

This reach of the Missouri River is designated as a Class A Primary Contact Recreation and Class B Significant Resource Warm Water stream. Such waters are to be protected for primary contact recreation, for the maintenance of a wide variety of warm water species, including sensitive species, and for wildlife, aquatic, and semiaquatic uses.

This State 401 Water Quality Certification has been issued by the department pursuant to Section 401 of the Clean Water Act. State Certification is required by the Army Corps of Engineers before a Section 404 permit can be issued. Section 401 Certification represents the department's concurrence that the project certified is consistent with the Water Quality Standards of the state of Iowa as set forth in Chapter 61, Iowa Administrative Code.

Subject to the attached conditions, incorporated by reference herein, the department has determined that there is reasonable assurance the proposed activities will be conducted in a manner that will not violate water quality standards of the state of Iowa.

By: Christine M. Schwabe

Date Executed: January 31, 2002

GENERAL CONDITIONS

1. Permittee is responsible for securing and for compliance with such other permits or approvals as may be required by this department, federal, or local governmental agencies for the project activities described.
2. All construction debris shall be disposed of on land in such a manner that it cannot enter a waterway or wetland.
3. Construction equipment, activities, and materials shall be kept out of the river to the maximum extent possible.
4. Equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the material into waterbodies, streams or wetlands except as approved herein.
5. Care shall be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering waterbodies, streams or wetlands.
6. Construction activities shall be conducted during low to normal flows and the applicant shall employ controls to reduce the erosiveness of land adjacent to surface waters and wetlands, including establishment and maintenance of the erosion controls during and after construction and revegetation of all disturbed areas upon project completion.
7. Prior to the placement of riprap structures, the banks shall be appropriately graded. Material removed during bank reshaping shall be disposed of in an upland, non-wetland location. Clearing of vegetation during bank reshaping and for the placement of the riprap structures, including trees located in or immediately adjacent to waters of the state shall be limited to that which is absolutely necessary for construction of the project.
8. Riprap shall consist of native fieldstone, quarry run rock or clean broken concrete. If broken concrete is used all reinforcement material shall be completely removed from it; if removal is not possible, said reinforcement material shall be cut flush with the flat surface of the concrete. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The concrete pieces shall be appropriately graded and no piece shall be larger than 3 feet across the longest flat surface. No asphalt or petroleum based material shall be used as or included in riprap material.
9. All disturbed areas not covered by riprap, shall be seeded with native grasses consistent with those included in the NRCS Critical Areas Seeding Mixture, excluding Reed Canary Grass, during an optimal seeding period. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as seeding can be completed during an optimal period. The applicant shall monitor revegetated areas continuously to assure success of revegetation.

SPECIAL CONDITIONS

1. To the maximum extent possible, the excavated material shall be discharged to the river at a rate not to exceed the sediment carrying capacity of the river.
2. During the fifth year after project completion, provide a monitoring report to the Iowa Department of Natural Resources providing as-built plans, information regarding the degree of success of the project, information regarding the effectiveness of the seeding and natural regeneration of the area, any erosion problems, and any plans for additional reseeding or necessary corrective actions.

IOWA DEPARTMENT OF NATURAL RESOURCES

AMENDED SECTION 401 WATER QUALITY CERTIFICATION

Certification issued to:

Effective: April 12, 2001

U.S. Army Corps of Engineers – Omaha District
Attn: Steven C. Rothe
CENWO-PM-AP
106 S. 15th Street
Omaha, NE 68102

Project certified: US Army Corps of Engineers, Joint Public Notice No. NE 1999-10336
State 401 Water Quality Certification, Application Log No.: 99-W-085-11-02-S

Proposal to discharge excavated sediments from the California Bend project into the Missouri River (River miles 648.4 to 650.1) in the Blair Nebraska area. Approximately 350,000 cubic yards of clay and sand would be deposited into the thalweg at a depth of approximately 11 feet. The Blair city water supply intake is approximately 500 feet beyond the downstream tip of the discharge site. Thus, discharge would be restricted to a certain distance, to be determined, upstream of the intake or downstream of the intake. Elutriate tests have been performed and no unusual metal or pesticide contaminant levels were detected. The Corps believes this project will have no substantial adverse effect on human use, water supplies, recreation, fisheries, esthetics, or protected areas.

Water quality use designation:

This reach of the Missouri River is designated as a Class A Primary Contact Recreation and Class B Significant Resource Warm Water stream. Such waters are to be protected for primary contact recreation, for the maintenance of a wide variety of warm water species, including sensitive species, and for wildlife, aquatic, and semiaquatic uses.

This State 401 Water Quality Certification has been issued by the department pursuant to Section 401 of the Clean Water Act. State Certification is required by the Army Corps of Engineers before a Section 404 permit can be issued. Section 401 Certification represents the department's concurrence that the project certified is consistent with the Water Quality Standards of the state of Iowa as set forth in Chapter 61, Iowa Administrative Code.

Subject to the attached conditions, incorporated by reference herein, the department has determined that there is reasonable assurance the proposed activities will be conducted in a manner that will not violate water quality standards of the state of Iowa.

By: Christine M. Schwake

Date Executed: April 12, 2001

GENERAL CONDITIONS

1. Permittee is responsible for securing and for compliance with such other permits or approvals as may be required by this department, federal, or local governmental agencies for the project activities described.
2. All construction debris shall be disposed of on land in such a manner that it cannot enter a waterway or wetland.
3. Construction equipment, activities, and materials shall be kept out of the river to the maximum extent possible.
4. Equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the material into waterbodies, streams or wetlands except as approved herein.
5. Care shall be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering waterbodies, streams or wetlands.
6. Construction activities shall be conducted during low to normal flows and the applicant shall employ controls to reduce the erosiveness of land adjacent to surface waters and wetlands, including establishment and maintenance of the erosion controls during and after construction and revegetation of all disturbed areas upon project completion.
7. Prior to the placement of riprap structures, the banks shall be appropriately graded. Material removed during bank reshaping shall be disposed of in an upland, non-wetland location. Clearing of vegetation during bank reshaping and for the placement of the riprap structures, including trees located in or immediately adjacent to waters of the state shall be limited to that which is absolutely necessary for construction of the project.
8. Riprap shall consist of native fieldstone, quarry run rock or clean broken concrete. If broken concrete is used all reinforcement material shall be completely removed from it; if removal is not possible, said reinforcement material shall be cut flush with the flat surface of the concrete. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The concrete pieces shall be appropriately graded and no piece shall be larger than 3 feet across the longest flat surface. No asphalt or petroleum based material shall be used as or included in riprap material.
9. All disturbed areas not covered by riprap, shall be seeded with native grasses consistent with those included in the NRCS Critical Areas Seeding Mixture, excluding Reed Canary Grass, during an optimal seeding period. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as seeding can be completed during an optimal period. The applicant shall monitor revegetated areas continuously to assure success of revegetation.

SPECIAL CONDITIONS

1. To the maximum extent possible, the excavated material shall be discharged to the river at a rate not to exceed the sediment carrying capacity of the river.
2. During the fifth year after project completion, provide a monitoring report to the Iowa Department of Natural Resources providing as-built plans, information regarding the degree of success of the project, information regarding the effectiveness of the seeding and natural regeneration of the area, any erosion problems, and any plans for additional reseeding or necessary corrective actions.

CORPS OF ENGINEERS 404 PERMIT
SPECIAL CONDITIONS

1. Confine all construction activities to project area.
2. Avoid spilling or dumping into the waterway.
3. Prevent any petroleum, products, chemical, or other deleterious material from entering the water.
4. Minimize suspended solids and turbidity, which may degrade water quality and damage aquatic life.
5. Only necessary clearing of vegetation.
6. Reduce erosiveness of land adjacent to water.
7. Discovery of historic or archaeological remains during construction warrants cessation of construction and consultation with Corps archaeologist.
8. Wetland re-establishment Plan for the project will be as outlined in Table 3-1 – see attached.
9. Permittee shall permit authorized representatives to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under the authority of this authorization is in accordance with the terms and conditions prescribed herein.
10. The Permittee is responsible for notifying the Omaha District Regulatory Branch by memorandum and/or through verbal communication of any minor or major project changes.

IOWA DEPARTMENT OF NATURAL RESOURCES
SECTION 401 WATER QUALITY CERTIFICATION
GENERAL CONDITIONS

1. Secure all other permits or approvals required by state, federal, and local government agencies.
2. Construction debris disposed of on land so that it will not enter a waterway or wetland.
3. Keep construction equipment, activities, and materials out of the river.
4. Operated equipment for handling material in such a way to avoid dumping or spilling.
5. Prevent any petroleum products, chemicals, or other deleterious materials from entering waterbodies, streams, and wetlands.
6. Conduct construction during low to normal flows and employ controls to reduce erosion of land adjacent to surface water and wetlands.
7. Riprap material of native fieldstone, quarry run rock or clean broken concrete.
8. All disturbed areas shall be seeded with warm season grasses (no Reed Canary Grass).
9. If construction is completed outside an optimal seeding period, temporary erosion controls shall be applied until conditions for seeding are favorable.

*Bothe
Olson*

CENWO-OD-R (1145b)

April 24, 2000

MEMORANDUM FOR CENWO-PM

SUBJECT: Corps project No. 199910336 (California Bend Restoration)

1. Enclosed is a copy of the signed Statement of Findings (SOF) with special conditions, 404(b)(1) evaluation for the subject project, Nebraska and Iowa water quality certifications, letter dated January 18, 2000 as referenced in the special conditions, and a copy of the public notice for this project. The SOF provides regulatory authorization under Section 404 of the Clean Water Act. Please note the special conditions included with the SOF.
2. If you have any questions, contact John Peterson at (402) 896-0896.

Michael Rabbe

Michael Rabbe
Nebraska State Program Manager

Encl
As

SECTION 404(b)(1) CHECKLIST

U.S. Army Corps of Engineers

1. Review of Compliance (Sec. 230.10(a)-(d))

a. Does the discharge represent the least environmentally damaging practicable alternative?

YES x NO

b. If in a special aquatic site, must the activity associated with the discharge have direct access or proximity to, or be located in the aquatic ecosystem to fulfill its basic purpose? (If no, see section 2 and information gathered for EA alternative.)

YES x NO

c. Does the activity appear to:

(1) violate applicable state water quality or effluent standards prohibited under Section 307 of the Clean Water Act.

YES NO x

(2) jeopardize the existence of Federally listed endangered or threatened species or their habitats?

YES NO x

(3) violate requirements of any Federally designated marine sanctuary? (If no, see section 2b and check responses from resource and water quality certifying agencies).

YES NO x

d. Will the activity cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values? (If no, see section 2).

YES NO x

e. Will appropriate and practicable steps be taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem? (If no, see section 5).

YES x NO

	<u>N/A</u>	<u>Signi- ficant</u>	<u>Not Signi- ficant</u>
2. Technical Evaluation Factors (Subparts C-F)			
a. Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C).			
(1) Substrate impacts.	—	—	<u>x</u>
(2) Suspended particulates/turbidity impacts.	—	—	<u>x</u>
(3) Water column impacts.	—	—	<u>x</u>
(4) Alteration of current patterns and water circulation.	—	—	<u>x</u>
(5) Alteration of normal water fluctuations/hydro-period.	—	—	<u>x</u>
(6) Alteration of salinity gradients.	—	—	<u>x</u>
b. Biological Characteristics of the Aquatic Ecosystem (Subpart D).			
(1) Effect on threatened/endangered species and their habitat.	—	—	<u>x</u>
(2) Effect on the aquatic food web.	—	—	<u>x</u>
(3) Effect on other wildlife (mammals, birds, reptiles and amphibians).	—	—	<u>x</u>
c. Special Aquatic Sites (Subpart E).			
(1) Sanctuaries and refuges.	<u>x</u>	—	—
(2) Wetlands.	<u>x</u>	—	—
(3) Mud flats.	<u>x</u>	—	—
(4) Vegetated shallows.	<u>x</u>	—	—
(5) Coral reefs.	<u>x</u>	—	—
(6) Riffle and pool complexes.	<u>x</u>	—	—
d. Human Use Characteristics (Subpart F).			
(1) Effects on municipal and private water supplies.	—	—	<u>x</u>
(2) Recreational and commercial fisheries impacts.	—	—	<u>x</u>
(3) Effects on water-related recreation.	—	—	<u>x</u>
(4) Aesthetic impacts.	—	—	<u>x</u>
(5) Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves.	<u>x</u>	—	—

REMARKS: Where a check is placed under the significant category, the preparer must add an explanation below.

3. Evaluation of Dredged or Fill Material (Subpart G).

a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. (Check only those appropriate).

- (1) Physical characteristics. YES NO
- (2) Hydrography in relation to known or anticipated sources of contamination. YES NO
- (3) Results from previous testing of the material or similar material in the vicinity of the project. YES NO
- (4) Known, significant, sources of persistent pesticides from land runoff or percolation. YES NO
- (5) Spill records for petroleum products or designated (Section 311 of Clean Water Act) hazardous substances. YES NO
- (6) Other public records of significant introduction of contaminants from industries, municipalities or other sources. YES NO
- (7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities. YES NO
- (8) Other sources (specify). YES NO

b. An evaluation of the appropriate information in 3a above indicates that there is reason to believe the proposed dredge or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and disposal sites and not likely to contaminate. The material meets the testing exclusion criteria.

YES NO

4. Disposal Sites Delineation (Section 230.11(f)).

a. The following factors as appropriate have been considered in evaluating the disposal site.

- (1) Depth of water at disposal site. N/A YES NO
- (2) Current velocity, direction, and variability at disposal site. N/A YES NO
- (3) Degree of turbulence. N/A YES NO
- (4) Water column stratification. N/A YES NO

- (5) Discharge vessel speed and direction.
 - (6) Rate of discharge.
 - (7) Dredged material characteristics (constituents, amount, and type of material, settling velocities).
 - (8) Number of discharges per unit of time.
 - (9) Other factors affecting rates and patterns of mixing (specify).
- b. An evaluation of the appropriate factors in 4a above indicates that the disposal site and/or size of mixing zone are acceptable.

N/A__ YES x NO__
 N/A__ YES x NO__

N/A__ YES x NO__
 N/A__ YES x NO__

N/A__ YES x NO__

YES x NO__

5. Actions to Minimize Adverse Effects (Subpart H). All appropriate and practicable steps have been taken, through application of recommendation of Section 230.70-230.77 to ensure minimal adverse effects of the proposed discharge.

YES x NO__

6. Factual Determination (Section 230.11). Does a review of appropriate information as identified in items 2-5 above indicate that there is minimal potential for short- or long-term environmental effects of the proposed discharge as related to:

- a. Physical substrate at the disposal site.
- b. Water circulation, fluctuation and salinity.
- c. Suspended particulates/turbidity.
- d. Contaminant availability.
- e. Aquatic ecosystem structure and function.
- f. Disposal site.
- g. Cumulative impacts on the aquatic ecosystem.
- h. Secondary impacts on the aquatic ecosystem.

YES x NO__
 YES x NO__

7. Findings.

- a. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) guidelines.
- b. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) guidelines with the inclusion of the following exceptions:
- c. The proposed disposal site for discharge of dredged or fill material does not comply with the Section 404(b)(1) guidelines for the following reason(s):

YES x NO__

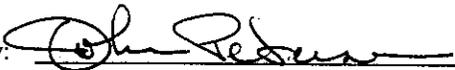
YES__ NO__

(1) There is a less damaging alternative. --

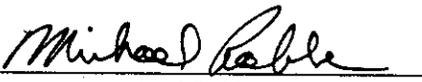
(2) The proposed discharge will result in significant degradation of the aquatic ecosystem. --

(3) The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem.

8. Evaluation Responsibility.

a. Prepared by: 
John Peterson
Project Manager

Date: April 18, 2000

b. Reviewed by: 
Michael Rabbe
Nebraska State Program Manager

Date: 4/24/00

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
SECTION 404 PERMIT DECISION DOCUMENT

This document constitutes the review and compliance determination for a project that requires authorization under Section 404 of the Clean Water Act of 1972. The review was conducted in accordance with policies described at 33 CFR Part 320 and in accordance with the procedures published at 33 CFR Part 325. This document also addresses the requirements contained in the Environmental Protection Agency's 404(b)(1) Guidelines published at 40 CFR Part 230. This document serves as an Environmental Assessment as required by the National Environmental Policy Act and Statement of Findings for the proposed project.

Project Proponent: U. S. Army Corps of Engineers
Application Number: 1999-10336
Project: Disposal of Dredge Materials
Waterway: Between Missouri River Mile 648.4 and 650.1

1. Project Location, Description and Purpose

PROJECT LOCATION: In the Missouri River, between river mile 648.4 and 650.1, along the right descending bank, in the Southeast ¼ of Section 32, Township 19 North, Range 12 East, and the Northwest ¼ of Section 5, Township 18 North, Range 12 East, Washington County, Nebraska

PROJECT DESCRIPTION: It is proposed that the Omaha District Corps of Engineers discharge excavated sediments from the California Bend, NE, Sec. 1135 project into the Missouri River in the Blair, Nebraska area. This seems to be the best alternative, as being environmentally safe and most beneficial for the river ecosystem.

Land disposal would raise about 20 acres of cropland by 9 feet in elevation, 9 feet above other flood plain lands. Due to landowner preferences and economics, and in order to avoid affecting any other wetlands, only one piece of ground is available for land disposal. Raising this ground, immediately adjacent to the channel restoration project, would further isolate it from interaction with floodwaters, the opposite of what our river restoration projects seek to do. It would alter the hydrology of that ground and make reforestation with floodplain and riparian species impractical or impossible, an adverse impact relative to river disposal.

River disposal would help redress the continuing degradation and other problems of sediment deficit in the river. The river carries far less sediment than historically. Thus, it degrades its bed, leading to significant ecosystem impacts. Added sediment could help defer this process, although briefly. In fact, one idea being considered for restoring middle Missouri River ecosystem values, including T&E species, is transport of more sediment past the upstream dams.

The river ecosystem is also suffering from a shortage of organic matter to feed invertebrates and the food chain as a whole. The dredge discharge would introduce some organic material to the river from excavated surface vegetation and some residual buried deposits.

The thalweg contains little invertebrate life, and thus little would be at risk of suffocation by the discharge.

Other considerations and possible effects are partly explained in the potential 404(b)(1) input shown below

Potential 404(b)(1) input

I. Project Description

General Description of Dredged or Fill Material: About 350,000 cubic yards of dredged sediments would be discharged into the Missouri River. The sediments are primarily clay, with a thick sand cover, previously deposited by river overbank flows.

Description of the Proposed Discharge Site(s): The intended discharge site is deep in the thalweg of the Missouri River. The river during navigation season passes an average of about 40,000 cfs, compared to anticipated dredge discharge rates of about 10 cfs to 27 cfs depending on equipment used by the contractor. Fast river velocities of 4 to 6 feet per second, combined with depths of 20-25 feet in the thalweg, would create much mixing of the discharge within a relatively short distance downstream.

The bed sediments at this site are unstable, perpetually moving downstream. The river at this site is continuing to degrade its bed several feet below historic levels due to the sediment shortfall caused by the upstream dams. The river normally transports about 20 million tons of sediment past this site annually, down from a pre-dam average of over 100 million tons per year. The dredging project would discharge 455,000 tons, 2 percent of modern annual transport loads, over a construction period which could range from 4 to 12 months. After a distance of a mile or two from the discharge point, the river would establish its equilibrium again, and would show the same sediment load as without the dredge discharge, because the overall sediment demand so outsizes the proposed discharge.

Description of Disposal Method: The material would be excavated by hydraulic cutterhead dredge. Most of the material would be discharged from the dredge discharge pipe as a slurry comprised of about 5 to 10 percent solids. The discharge pipe would be submerged in the thalweg of the river to a depth of about 20 feet.

II. Factual Determinations

- a. Physical Substrate Determinations: The discharge site substrate consists of heavy sands during the navigation season. These sands are unstable, continually moving downstream as part of a shifting bedload. Such substrates are typically depauperate of invertebrate life forms.
 - b. Water Circulation, Fluctuation and Salinity Determinations: Not applicable
 - c. Suspended Particulate/Turbidity Determinations: The discharged material would consist of about 5 to 10 percent solids. After mixing throughout a 2,000-foot mixing zone, concentrations should be at background levels. The same would be true for turbidity.
 - d. Contaminant Determinations: Some of the sediments were subjected to elutriate testing for C.O.D., B.O.D., pH, ammonia, and turbidity. No unusual metal or pesticide contaminant levels were detected. Ammonia showed a few slightly raised concentrations, which would likely become undetectable after brief river mixing. The site has been almost entirely agricultural, and the sediments are derived primarily from river overbank flows. No HTRW evidence was seen.
 - e. Aquatic Ecosystem and Organism Determinations: The disposal site is expected to be essentially devoid of invertebrate life such as mussels, because of its fast flows and shifting nature. Vertebrates in the site would be few if any, but could include riverine fish, which would be mobile and able to avoid the discharge point.
 - f. Proposed Disposal Site Determinations: The disposal site is the channel thalweg of the Missouri River. Given the velocities and energy available in the river at this point, the discharged clay sediments are expected to be carried readily out of the site and to be carried downstream for an indefinite distance. Little of the sediment would accumulate at the bottom of the site, and any which did would likely be removed as part of the shifting bed load within a short time. The Blair city water supply intake is located approximately 2 miles downstream of the project's upstream end and approximately 500 feet beyond the downstream tip of the discharge site. Thus, discharge would be restricted to a certain distance, to be determined, upstream of the intake, or downstream of this intake.
- The action would have no substantial adverse effect on human use, water supplies, recreation, fisheries, esthetics, or protected areas.
- g. Determination of Cumulative Effects on the Aquatic Ecosystem: Considering the historic turbidity levels of the river, its unused capacity to carry large amounts of sediment, and considering other past, present, and reasonably foreseeable activities, the project would not have adverse cumulative effects. The discharge would in fact help offset historically recent diminishment of the sediment and organic and nutritive content of the river.

Average Missouri River discharge during navigation season April through November: 40,000 cfs.

Average river velocities, main channel: 4-5 fps

Deepest river depths: 20-25 feet

Estimated excavation rate: about 200 - 500 cubic yards/hour.

Estimated dredge discharge capacity: about 5,000 - 12,000 gallons/minute, or about 10 to 27 cfs.

Estimated effluent-to-sediment ratio: from about 7 to 12.

Effluent consistencies: about 8 - 14 percent solids

PROJECT PURPOSE: Habitat restoration and preservation

2. Discussion of Comments Received in Response to Public Notification (33 CFR Part 325.3)

Application complete date: October 29, 1999
Public Notice issue date: November 11, 1999
Public Notice expiration: December 11, 1999

2.1. Summary of Comments: Federal Agencies

2.1.1. The Fish & Wildlife Service commented in a letter dated December 13, 1999; "The Service concurs with comments and recommendations of the Nebraska Game and Parks Commission, and the Nebraska Department of Environmental Quality and has no objection to issuance of a Department of the Army permit for the proposed project, provided that any special conditions recommended by any of the above mentioned resource agencies are incorporated.

No Corps response is required.

2.2. Summary of Comments: State Agencies

2.2.1. NE State Historical Society December 3, 1999: "The referenced project does not contain recorded historic resources and therefore has not been evaluated through the use of historic contexts. It is our opinion that no survey for cultural resources will be required. Your undertaking, therefore, will have no effect on an historic property and may proceed as planned. There is, however, always the possibility that previously unsuspected archeological remains may be uncovered during the process of project construction. We therefore request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action."

No Corps response required.

Nebraska Game and Parks Commission December 13, 1999: The Commission staff reviewed the proposal for the Corps' Section 1135 project and fully support the project as described in the public notice, as it will benefit both aquatic and terrestrial species. The Game and Parks Commission has been active with Section 1135 projects and the Missouri River Mitigation Project and feel this project will help restore some of the functions that have been removed from the Missouri River.

No Corps response required.

2.2.2. NE Department of Water Quality March 10, 2000: Water quality certification was provided subject to the following condition(s): The point of discharge shall be located downstream of the Blair Municipal Water Supply Intake facility, in the manner as described in the letter provided to us dated January 18, 2000, from yourself to Mr. Joel Christensen, Manager, Omaha Metropolitan Utilities District.

This special condition will become a special condition to the permit.

2.2.3. IA Department of Natural Resources December 13, 1999: Water quality certification was provided subject to the following comment: "While not a condition of this certification, you are reminded that applicants are responsible for obtaining an NPDES storm water permit from the Department prior to initiating construction if the construction activity associated with the proposed project will result in the disturbance of five or more acres, total land area.

Special conditions are as follow:

1. To the maximum extent possible, the excavated material shall be discharged to the river at a rate not to exceed the sediment carrying capacity of the river.
2. During the fifth year after project completion, provide a monitoring report to the Iowa Department of Natural Resources providing as-built plans, information regarding the degree of success of the project,

information regarding the effectiveness of the seeding and natural regeneration of the area, any erosion problems, and any plans for additional reseeding or necessary corrective actions.

2.3. Summary of Comments: Local Agencies

2.3.1. Metropolitan Utilities District of Omaha November 23, 1999: The following comments are intended to represent issues which, the District believes, should be assessed and available for review prior to implementation of this project.

- Increases in total organic loading and ammonia have a direct impact on the ability of water utilities to meet water quality regulations (disinfection byproducts) and may contribute to significant taste and odor problems (dichloramines and trichloramines). Estimates of levels of contaminants downstream of the discharge should consider the higher considerations due to the length of the project and the workweek. For example, since the discharge is estimated to be 2% of the annual transport load, and the project may only last for four months, the actual concentration would be 6%. Additionally, if work is conducted for a 40 hour workweek, the concentration would be about 25%. Percent discharge loading is also dependent on normal seasonal loading at the time of the discharge.
- The statement is made that within a mile or two the sediment load would be the same as with no dredged discharge. Assumptions and calculations for this conclusion should be available for review.
- There are examples of discharge plumes and convergent rivers not mixing completely for many miles of river travel. Evidence to support the statement that complete mixing should be achieved within 2,000 feet of the discharge point should be referenced or available for review.
- Assumptions about streambed degradation should be verified.
- The Corps should be concerned that this decision will set a precedent for future actions. If this permit is consistent with prior practice, a discussion of past regulatory actions for applications proposing discharges of similar dredged material should be presented.
- Any permit condition should include strict notification requirements by the dredging Contractor to affected parties downstream including water suppliers such as the City of Blair, the Council Bluffs Waterworks, and the Metropolitan Utilities District of Omaha.

2.3.2. City of Blair December 9, 1999: The city agrees with the comments of the Metropolitan Utilities District in their response letter of November 23, 1999. Additionally, due to our proximity with the discharge areas of the project, we are very concerned with the possible increase in contaminants and turbidity levels at the location of our intake structure.

The application states that within a distance of a "mile or two" from the point of discharge, the river would establish equilibrium and show the same sediment load as without the discharge. The permit also states that after mixing throughout a 2000 foot mixing zone, concentrations and turbidity should be at background levels. Under either one of these scenarios, it would seem that the Blair Water System would be adversely affected.

We request that if this work is performed, specific efforts be made to regulate discharge levels so the contaminant and turbidity levels in the area of the Blair Water Intake do not exceed the levels shown above the work area. This would allow our treatment process to operate within normal seasonal parameters and not create operational or compliance problems.

2.4. Summary of Comments: Private Interests

No comments

2.5 Consideration of Comments (33 CFR 325.2(a)(3))

The Corps' project manager, Steve Rothe responded to the MUD of Omaha and City of Blair's comments in a letter dated January 18, 2000. The letter was addressed to MUD of Omaha with copies furnished to City of Blair, Nebraska Health and Human Services, Council Bluffs Water Works, and the Nebraska DEQ.

This summary of comments are as follows:

- The Corps plans to locate the dredge discharge point downstream of the Blair intake for all materials dredged from the downstream mile of the California Bend chute, and to discharge all the project's dredged material downstream of that intake could be an option and may or may not become the final plan, depending on costs and

on what might be required to satisfy technical and public perception needs if the Corps discharged about two (2) miles upstream of the intake.

- Since the Metropolitan Utilities District's (MUD) intake facility is 22 river miles downstream of the proposed discharge site, the Corps expects that the dilution and mixing in the long dynamic river reach between the discharge and MUD's intake will help avoid measurable impact to water quality at Omaha. The Corps is open to other considerations, and presents available information here for review.

- Several factors will work to minimize impacts at Omaha from the California Bend project.
First, the expected concentrations of contaminants should not be high even at the discharge point. The Corps provided elutriate tests results for six boring samples (five boring holes), a map showing the location of the borings, soil boring notes, and soil classification results for the boring samples. These elutriate tests would encourage us to expect only minor water quality impacts downstream of the discharge and no substantial problems at Omaha or Council Bluffs.

Second, the discharge would be timed to maximize mixing and dilution. The Corps would allow discharge only when river flows were at substantial rates, that is, at least 28,000 c.f.s. This would eliminate winter discharge in nearly any year. The discharge rates would be prescribed by the following schedule:

Dredge Discharge (GPM) (Water and Sediment)	Missouri River Discharge (c.f.s.)	Missouri River Stage (ft) @ Blair
10,000	28,600	14.4
12,000	34,600	16.0
16,000	45,000	18.1
21,000	60,000	20.1
27,000	75,000	22.0

Third, the discharged stream would comprise a very small portion of total flows. A large dredge's discharge would comprise no more than approximately 0.07 percent of the river's discharge. Also, there is a possibility that for economic reasons the Corps will specify a narrower chute width, which would use a small dredge. Although discharged sediments could in fact be 21 percent of a day's load in the river, sediment itself is not likely the MUD's main concern, as much as potential contaminants from the sediment. The elutriate tests indicate that the Corps' should have no substantial impacts on water quality once the river has mixed and diluted these discharges.

- MUD is correct that plumes can extend many miles, and the statement about a 2,000-foot mixing zone may be too optimistic. While the Corps expects the majority of the discharged sediments to integrate into the river sediment load and total load equilibrium to be restored within a relatively short distance, it is true that suspended particulates and turbidity could remain measurably above ambient levels for a longer distance. Still, the Corps expects these parameters to fall within a normal and tolerable range well upstream of Omaha.
- As to setting a precedent, several such projects have been certified previously. The California Bend, Iowa, Mitigation project; dredging was just completed this fall across the river from our proposed Blair project. The Corps understands that MUD had no comments on that project. The Corps would be very interested to know whether any water quality impacts were noted at Omaha. The Lower Decatur Bend project also received its certification in the past year. The Hidden Lake/Great Marsh project occurred in 1997. That discharge was conducted under the following special permit requirements required by the Iowa Department of Natural Resources, and these are now incorporated in all our dredging specs to the degree feasible:
 1. Missouri River flows greater than 28,000 c.f.s.
 2. Discharge pipe located 15-20 feet deep, 50-65 feet from shore, and 4-6 feet above the river bed to accelerate mixing and integration into the bed load. (this may not be feasible at California Bend, Nebraska)
- The Hidden Lake/Great Marsh discharges were monitored at the discharge pipe and in the river downstream. The results indicated only minor increases in turbidity, and no detectable increase in volatile compounds, organics (BOD, COD), or other substances within about 2-3,000 feet of discharge. The exceptions were lead, copper, and chromium that did appear above ambient levels even at the 2,000 foot mixing zone border in a few

samples. This is believed due to the history of metal handling along the river in Omaha, and is not reflective of what can be expected from the California Bend project.

- As MUD suggests, the Corps should be concerned as to whether proposed river discharges would pose contaminant problems. The Corps is not overly concerned about dredge discharge in and of itself. Sediment in the river is not an innate problem. Modern sediment loads are a fraction of historic loads (at Omaha, 20,000,000 tons/year today compare to a historic 100,000,000 tons/year). The Corps' previous dredging projects have indicated no appreciable sediment accumulation either in or off the channel. Organic matter is also thought to have been greatly reduced from historic levels; this reduction being one cause of aquatic habitat degradation. Thus, its increase would not be innately bad, but its potential impacts on domestic water and on instream functions must be considered. Turbidity is an optical parameter and can fluctuate widely from day to day depending on weather conditions, sediment makeup, and runoff; it, too, was likely higher at times in the historic river. Of course, each of these and modern chemicals need to be considered for their potential impacts in each proposed case.
- With these considerations in mind and with the problems and potential costs caused by land disposal, the Corps expects to propose more dredging projects in the future. The Corps will need to rely on their own efforts and those of agencies such as MUD and others to ensure that the Corps takes reasonable precautions before and during such operations. The Corps is inclined to conduct some discharge monitoring to help assure themselves and others that habitat and water quality are not damaged by their actions.

3. Public Interest Factors (33 CFR Part 320.4)

3.1. Wetlands.

No wetlands will be impacted by this project.

3.2. Fish and Wildlife (including general habitat conservation)

The project will increase the diversity of the area by creating 43 acres of Palustrine Forested Wetlands, 64 acres of open-water chute. All changes would maintain a higher quality aquatic environment.

3.2.1. Compliance with E.O. 12962: Impact of proposed project on recreational fisheries

The project will not negatively impact, but increase recreational fisheries

3.3. Water Quality

No adverse impacts

3.4 Historic, cultural, scenic and recreational values

No adverse impacts

3.5 Effects on Limits of the Territorial Sea

Not applicable

3.6 Consideration of property ownership

The project is located entirely on private property and entirely accepted by the owner

3.7 Activities Affecting Coastal Zones

Not applicable

3.8 Activities in Marine Sanctuaries

Not applicable

3.9 Other Federal, State or Local Requirements

Not applicable

3.10 Safety of Impoundment Structures

Not applicable

3.11 Floodplain Management (including flood hazards)

Not applicable

3.12 Water Supply and Conservation

No adverse impacts

3.13 Energy Conservation and Development

Not applicable

3.14 Navigation

This project will not affect navigation as defined in 33 CFR 322.2(a).

3.15 Environmental Benefits

The habitat in the area will become more diversified.

3.16 Economics

No economic gain or loss is anticipated.

3.17 Mitigation

None required

3.18 Shore Erosion and Accretion

No adverse impacts are expected; Once the new shoreline becomes vegetated, there should be little or no erosion.

4. General Public Interest Criteria [320.4(a)(2)]

4.1 What is the relative extent of the public and private need for the proposed structure or work

The completion of the project will meet a public and private need to provide flood storage and fish and wildlife diversity.

4.2 Where there are unresolved conflicts as to resource use, what is the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work.

The proposed project represents the least damaging, practicable alternative to accomplish the objective of the project. These type of restoration projects have and continue to be done along the channeled portion of the Missouri River, their construction is much needed to replace the flood storage capacity and fisheries habitat lost to the historic manipulation of the Missouri River.

4.3 What is the extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

The completed project will provide public and private long-term benefits.

5. Discussion of 404(b)(1) Guidelines (40 CFR Part 230, Subparts C - G)

5.1. Subpart C - Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

5.1.1. Substrate (230.2)

Approximately 104 acres of upland will be converted to diverse wetlands, thus increasing the overall substrate area.

5.1.2. Suspended Particulates/turbidity (230.21)

There will be minor, short-lived turbidity during construction.

5.1.3. Water (230.22)

Water quality impacts will be short-lived until the shores become vegetated. Water quantity will increase by the impoundment.

5.1.4. Current patterns and water circulation (230.23)

No adverse impacts

5.1.5. Normal water fluctuations (230.24)

No adverse impacts

5.1.6. Salinity gradients (230.25)

No adverse impacts

5.2. Subpart D - Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

5.2.1. Threatened and endangered species (230.30)

No adverse impacts

5.2.2. Fish, crustaceans, mollusks and other aquatic organisms in the food web (230.31)

The modifications will increase the amount of aquatic habitat in the area.

5.2.3. Other wildlife (230.32)

Other wildlife will benefit from the increased diversity in the area.

5.3. Subpart E - Potential Impacts on Special Aquatic Sites

5.3.1. Sanctuaries and refuges (230.40)

Not applicable

5.3.2. Wetlands (230.41)

Wetlands will be increased in quantity and quality.

5.3.3. Mud flats (230.42)

No impact

5.3.4. Vegetated shallows (230.43)

Vegetated shallows will be increased in quantity.

5.3.5. Coral reefs (230.44)

No impact

5.3.6. Riffle and pool complexes (230.45)

Riffle and pool complexes will be increased in quantity and quality.

5.4. Subpart F - Potential Effects on Human Use Characteristics

5.4.1. Municipal and private water supplies (230.50)

No adverse impact. Coordination with the Omaha Metropolitan Utilities District, Council Bluffs Water Works, and the Blair Municipal Water Supply has found that they have no further concerns.

5.4.2. Recreational and commercial fisheries (230.51)

One of the products of this enhanced area, is a spawning area to increase the recreational fisheries in the Missouri River.

5.4.3. Water-related recreation

The recreational fisheries will be increased by this project.

5.4.4. Aesthetics

The natural aesthetics will be better due to the development of this project.

5.4.5. Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves
No adverse impacts

5.4.6. Other human use factors

(a) Traffic/transportation patterns

No adverse impacts

(b) Safety

No adverse impacts

(c) Air Quality

No adverse impacts

(d) Noise

There will be additional noise during construction, however this will be short-lived.

(e) Land use classification

There will be a change from agricultural land to forested, river-bottom.

(f) Economics

There will be no economic benefit to the landowner or permittee.

(g) Prime and unique farmland (7 CFR Part 658).

No adverse impacts

(h) Food and fiber production

There will be no significant impact to food and fiber production.

(i) Mineral needs

No adverse impacts

(j) Consideration of private property

The project is located on private property

(k) Historic properties [Section 301(5) NHPA]

See 2.2.1. above

(l) Energy consumption or generation

No adverse impacts

5.5. Subpart G - Evaluation and Testing

5.5.1. General evaluation of dredged or fill material (230.60)

Not required

5.5.2. Chemical, biological, and physical evaluation and testing (230.61)

Not required

5.6. Subpart H - Actions to Minimize Adverse Impacts

5.6.1. Actions concerning the location of the discharge (230.70)

The discharge of the dredged materials has been coordinated with Iowa DNR, Nebraska DEQ, Omaha MUD, City of Blair Municipal Water Supply, and the Council Bluffs Water Works. The project will be done in the manner as described in the letter dated January 18, 2000, provided to the above agencies. This letter is shown in 2.5 Consideration of Comments (33 CFR 325.2(a)(3)).

5.6.2. Actions concerning dredged or fill material (230.71,72,73)

All dredged material will be placed in the Missouri River in accordance with 2.5 Consideration of Comments (33 CFR 325.2(a)(3)).

5.6.3. Actions related to technology (230.74)

No adverse impact

5.6.4. Actions affecting plant and animal populations (230.75)

Disturbed areas will be revegetated.

5.6.5. Actions affecting human use (230.76)

No adverse impact

5.6.6. Other actions (230.77)

None

6. Compliance with Subpart B of the 404(b)(1) Guidelines (40 CFR 230.10)

6.1 Are there practicable alternatives that have less adverse impact on the aquatic ecosystem and are without other significant adverse environmental consequences? [230.10(a)]

6.1.1. Water Dependency

The activity is being done to preserve hydrologic functions necessary to refurbish the negative impacts created by the original channel modifications. Therefore the Corps finds this to be a water dependent activity.

6.1.2. Avoidance (no action)

If the no action alternative were chosen, the Corps would need to look for a similar situation on another Missouri River bend to remedy the continuing problem. This would add great cost to a project that needs to be done for the environment.

6.1.3. Other locations

Other locations along the channel will have similar impacts.

6.1.4. Other designs

Other designs will have similar impacts with the addition of great cost to the federal government.

6.1.5. Secondary and Cumulative impacts

Secondary impacts would be minimal at first, and then correcting themselves in the near future. Cumulative impacts were searched, and found to be minimal.

6.2. Does the fill violate any statutory requirements? [230.10(b)]

6.2.1. Does the project comply with state water quality standards?

Yes, conditioned water quality certification was provided on December 13, 1999 by the Iowa DNR.
Yes, conditioned water quality certification was provided on March 10, 2000 by the Nebraska DEQ

6.2.2. Does the project violate any standard or prohibition under Section 307 of the Act (toxic & pretreatment effluent standards)?
No

6.2.3. Does the project jeopardize the continued existence of a species listed as threatened or endangered under the Endangered Species Act of 1973, or result in the destruction or adverse modification of designated critical habitat?
No

6.2.4. Does the project violate any requirement imposed to protect marine sanctuaries (Marine Protection, Research and Sanctuaries Act, 1972, Title III)?
No

6.3. Does the fill material cause or contribute to significant degradation of waters of the United States (based upon factual determinations in Section 4. above) [230.10(c)]

6.3.1. Human health and welfare (municipal water supplies, plankton, fish, shellfish, wildlife, special aquatic sites)
No adverse impact

6.3.2. Life stages of aquatic life and other wildlife dependent of the aquatic ecosystem
No adverse impact

6.3.3. Aquatic ecosystem diversity, productivity and stability (loss of fish and wildlife habitat or the loss of the capacity of the wetland to assimilate nutrients, purify water or reduce wave energy)
No adverse impact

6.3.4. Recreational, aesthetic and economic values
Recreational and aesthetic values will be enhanced.

6.4. Have all appropriate and practicable steps been taken to minimize impact of the discharge on the aquatic ecosystem [230.10(d)]
See 5.6. and 6.1. above.

7. Compliance with Related Federal Laws (33 CFR Part 320.3)

7.1. Section 401 of the Clean Water Act of 1972, as amended (33 USC 1314)
Yes

7.2. National Environmental Policy Act of 1969 (42 USC 4321-4347)
Yes

7.3. Fish and Wildlife Coordination Act of 1958 (16 USC 661-666c)
Yes

7.4. Federal Power Act of 1920 (16 USC 791a et seq.)
Yes

7.5. National Historic Preservation Act of 1966 (16 USC 470)
Yes

7.6. Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.)
Yes

7.7. Endangered Species Act (16 USC 1531 et seq.)
Yes

7.8. Section 7(a) of the Wild and Scenic Rivers Act (16 USC 1278 et seq.)
Yes

7.9. Section 402 of the Clean Water Act (National Pollution Discharge Elimination System)
Yes

7.10. Section 176 of the Clean Air Act General Conformity Rule Review: The proposed permit has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act (need a citation). It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit.

8. Statement of Findings [33 CFR Part 325.2(a)(6)]

8.1. Findings Of No Significant Impact (FONSI) [33 CFR Part 325.2(a)(4)]. On behalf of the District Engineer, I have evaluated the information provided by the applicant and other interested parties. I have determined this project will not have a significant impact on the quality of the human environment and that an Environmental Impact Statement is not required.

8.2. Findings in regard to the Public Interest (33 CFR Part 320.4). On behalf of the District Engineer, I have determined that issuance of a permit under Section 404 of the Clean Water Act, with special conditions,

(X) is not contrary to the Public Interest

() is contrary to the Public Interest

8.3. Compliance with the 404(b)(1) Guidelines (40 CFR 230.12). On behalf of the District Engineer, I have determined that

() the proposed project complies with the Guidelines.

(X) the proposed project complies with the Guidelines with inclusion of appropriate and practicable conditions to minimize adverse effects (see 5.6 above) to the affected aquatic ecosystems.

() the proposed project fails to comply with the Guidelines based on conclusions reached in Section 6. above.

() There is not sufficient information to make a reasonable determination as to whether the project complies with the Guidelines.

4-12-00

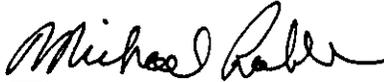
Date



John Peterson
Project Manager

4/24/00

Date



Michael Rabbe
Nebraska State Program Manager

Corps of Engineers 1999-10336
California Bend Restoration Dredge Disposal
Missouri River

Special Conditions:

1. The discharge of dredged fill materials into the Missouri River as authorized by this permit shall comply with the letter dated January 18, 2000 from Steven C. Rothe, Corps' Project Manager, CENWO-PM-AP to Joel Christensen, Manager, Water Operations, Omaha Metropolitan Utilities District. (copy attached)
2. To the maximum extent possible, the excavated material shall be discharged to the river at a rate not to exceed the sediment carrying capacity of the river.
3. During the fifth year after project completion, the applicant must provide a monitoring report with as-built plans, degree of project success, effectiveness of seeding and natural regeneration, any erosion problems, and any plans for additional reseeded or necessary corrections actions to the Iowa Department of Natural Resources and the U. S. Army Corps of Engineers Nebraska Regulatory Office at Wehrspann.
4. Specific efforts must be made to regulate discharge levels so the contaminant and turbidity levels in the area of the Blair Water Intake do not exceed the levels shown above the work area.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

August 28, 1995

Mr. Steve Rothe
Section 1135 Program Manager
Planning Division
Corps of Engineers
Omaha District
215 North 17th Street
Omaha, NE 68102-4978

Dear Mr. Rothe:

This responds to your letter dated August 22, 1995, requesting comments by the U.S. Fish and Wildlife Service regarding an environmental review of the California Bend habitat restoration project, Washington County, Nebraska. In accordance with Section 7(c) of the Endangered Species Act of 1973, we have determined that the following federally listed threatened and endangered species may occur within or near the proposed project in Washington County, Nebraska:

Species	Expected Occurrence
BIRDS:	
Peregrine falcon (<u>Falco peregrinus</u>)	migration
Bald eagle (<u>Haliaeetus leucocephalus</u>)	migration, winter resident, nesting
Interior least tern (<u>Sterna anatillarum</u>)	migration, nesting
Piping plover (<u>Charadrius melodus</u>)	migration, nesting
PLANTS:	
Western prairie fringed orchid (<u>Platanthera praeclara</u>)	tall-grass prairie
INSECTS:	
American burying beetle (<u>Nicrophorus americanus</u>)	riparian zone, grassland
FISH:	
Pallid sturgeon (<u>Scaphirhynchus albus</u>)	Missouri River

Bald eagles use mature riparian timber near streams and lakes. The Missouri River is a major wintering area. Migrating and wintering eagles may be found in Nebraska between November 1 and

April 1. We recommend that a survey be conducted to determine the number of eagles using the area, and whether any night roosts or feeding sites lie within the affected area. The project area should also be monitored for possible nest building activities.

Peregrine falcons generally are associated with wetlands and open areas such as cropland and grassland. Most observations in Nebraska are in late April to early May, September, and October.

Least terns and piping plovers nest on sparsely vegetated sandbars in rivers and on sand piles resulting from sand and gravel mining operations. Terns and plovers nest on the Platte, Loup, Niobrara, Elkhorn, and Missouri rivers in Nebraska. No tern or plovers nesting colonies are known to occur in the vicinity of the proposed project. The primary nesting period for terns and plovers in Nebraska is from mid-May to mid-August.

The western prairie fringed orchid is usually found in tall-grass calcareous silt loam or sub-irrigated sand prairie. Populations are known to occur in Lancaster, Sarpy, Seward, Hall, and Cherry counties, Nebraska. It appears that potential habitat may be present, and we recommend that a survey be conducted to determine possible occurrence of this plant within the affected area. The survey should be completed during the flowering period of the plant, mid-June to mid-July. For information about orchid surveys, we recommend that you contact Mr. Mike Fritz, Nebraska Game and Parks Commission, P.O. Box 30370, Lincoln, NE 68503, (402)471-5419.

The American burying beetle has recently been collected (July 1993, 1994, and 1995) in Dawson, Lincoln, Keya Paha, and Cherry counties, Nebraska. The American burying beetle habitat is not clearly defined, but recent captures suggest the possibility of riparian woodlands, mixed agricultural lands, including pastures and mowed fields, and grasslands as beetle habitat. We recommend that a survey be done to determine the possible occurrence of the American burying beetle within the project area. The survey should be conducted during the months of June, July, and August. For further information about or assistance with surveys for the beetle, we suggest that you contact Dr. Brett Ratcliffe, Nebraska State Museum, W. 436, Nebraska Hall, University of Nebraska, Lincoln, NE 68588-0514, (402)472-2614.

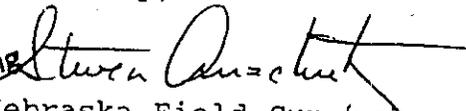
The pallid sturgeon is found in the Missouri River and the lower reaches of major tributaries, including the Platte River. Potential effects on the pallid sturgeon should be considered whenever activities affect the hydrology of these rivers.

If the U.S. Army Corps of Engineers determines that the project may affect listed species, or critical habitat, formal Section 7 consultation should be requested from this office. If it is determined that there will be no effect, further consultation is unnecessary.

You should also be aware that the Service was recently petitioned to list the sicklefin chub (Macrhybopsis meeki) and sturgeon chub (Macrhybopsis gelida), both Category 1 candidate species which occur in the Missouri River. A 90-day finding on the petition, published in the January 18, 1995, Federal Register, concluded that listing of the two species as endangered may be warranted. We anticipate that both species will be proposed for listing in the near future.

Should you have any further questions, please contact Mr. Wally Jobman within our office at (308)382-6468. Thank you for the opportunity to provide comments on this project.

Sincerely,

Acting 
Nebraska Field Supervisor

cc: FWS; Bismarck, ND (Attn: Roger Collins)
NGPC; Lincoln, NE (Attn: Mark Brohman)
EPA; Kansas City, KS (Attn: Tom Taylor)

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SECTION 01400

SPECIAL SAFETY REQUIREMENTS

05/00 Rev 12/01

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SECTION 01400

SPECIAL SAFETY REQUIREMENTS
05/00 Rev 12/01

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1926 Safety and Health Regulations for Construction

ENGINEERING MANUALS (EM)

EM 385-1-1 (1996 and Changes) Safety and Health Requirements Manual

1.2 SUMMARY

1.2.1 General

This section provides guidelines for preparation of accident prevention plans, and to implement the accident prevention clause (this specification) and EM 385-1-1, Safety and Health Requirements Manual. The U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1 is available from U.S. Government bookstores operated by the Government Printing Office. Changes to EM 385-1-1 applicable to this contract include only those revisions posted at the following website (all revisions up to the time this solicitation is issued):
http://www.hq.usace.army.mil/soh/hqusace_soh.htm ("Changes to EM"). U.S. Government bookstores are located in most major cities including Milwaukee, Chicago, Kansas City, Denver, and Pueblo, Colorado.

1.3 PRECONSTRUCTION CONFERENCE

See Contract Clause "PRECONSTRUCTION CONFERENCE". A preconstruction conference will be scheduled prior to beginning of site work. Requirements relative to planning and administration of the overall safety program will be discussed.

1.4 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Accident Prevention Plan; G-RE

The written site-specific Accident Prevention Plan.

SD-07 Certificates

Qualifications; G-RE.

A written report providing evidence of qualifications for personnel, facilities and equipment assigned to the work.

1.5 ACCIDENT PREVENTION PLAN

The Contractor shall submit, prior to the start of on site construction activity, a proposed accident prevention plan which shall be the accident prevention policy to be followed by all of the Contractor's and subcontractor's personnel and supervisory staff during performance of the work.

1.5.1 Requirements

The proposed plan shall be developed after a careful analysis of the work involved and shall be tailored specifically to the conditions of this project. The Contractor's accident prevention plan shall contain, as a minimum, the following general information or procedures for the activity indicated. The Contractor shall submit his plan for review and acceptance prior to commencing work.

1.5.1.1 Responsible Individual(s)

The Contractor shall designate an onsite employee as the individual responsible for insuring the accident prevention plan is implemented and enforced.

1.5.1.2 Subcontractor Supervision

Explain procedures to assure that subcontractor(s) fully comply with the accident prevention plan.

1.5.1.3 Indoctrination of New Employees

The plan shall include provisions for advising workers of the purpose of the accident prevention plan, specific hazards on the job and precautions to be taken, emergency procedures, information concerning tool box safety meetings, required protective equipment, cleanup rules and location of company safety rules (posting or handout).

1.5.1.4 Tool Box Safety Meetings

Hold weekly "Tool Box" safety meetings. Timely safety subjects shall be determined by a responsible individual. Employees will be informed of time, location, who will conduct, and subject. Identify procedures for including subcontractors. The Contractor shall provide a copy of the Weekly Tool Box Meeting and Monthly Supervisor's Safety Meeting to the Contracting Officer.

1.5.1.5 Fire Prevention and Protection

Identify source of fire protection. Insure adequate fire extinguishers,

water barrels, or other fire-fighting equipment is located on site. Explain prevention activities to include storage areas and special hazards such as welding and use of flammable liquids, and other special hazards.

1.5.1.6 Housekeeping

Daily cleanup of all debris and waste materials is required. Adequate disposal containers should be placed strategically around the site. Debris shall be removed on a regular basis. Explain procedures that include use of barrels, dumpsters, trash chutes, etc.

1.5.1.7 Mechanical Equipment Inspection

All mechanical equipment (trucks, cranes, forklifts, backhoes, graders, etc.) shall be inspected prior to use and at fixed intervals throughout the life of the contract. Explain how inspections will be accomplished (frequency, by whom, and records to be kept).

1.5.1.8 First Aid and Medical Facilities

First aid facilities shall be made available on the job site. Arrangements for emergency medical attention shall be made prior to start of work. All emergency numbers (doctor, hospital, ambulance, fire department) shall be posted at the project superintendent's office.

1.5.1.9 Sanitation

Include provisions for toilet facilities, drinking water and washing facilities. A sufficient number of toilet facilities as specified in EM 385-1-1 shall be provided unless permission is granted to use existing facilities (portable chemical are authorized). Insure safe drinking water and individual cups are available. For the projects where corrosive or toxic materials are used, separate washing facilities are required.

1.5.1.10 Safety Promotions

The Contractor shall promote accident prevention. Identify method (posters, awards etc.).

1.5.1.11 Accident Reporting

All accidents (employee injuries, vehicle, building, or equipment damage etc.) regardless of their severity, shall be reported to the onsite government representative or to the area engineer, who in turn will advise the Contractor of forms to be submitted and timeframes.

1.5.1.12 Job Hazard Analysis

When job situations change and it is necessary to alter safety requirements, a Job Hazard Analysis will be accomplished, documented, and added as an addendum to the Accident Prevention Plan. Each Job Hazard Analysis shall include, but not be limited to, a description of the work, probable hazards related to that work and positive precautionary measures to be taken to reduce or eliminate each hazard. An example of changing situations may be new subcontractors performing work such as earth moving, trenching, concrete work, roofing, electrical, masonry etc. The onsite government representative will determine the format and amount of detail required of the written plan.

1.6 EXCAVATION AND TRENCHING

The standards for excavation and trenching are outlined in 29 CFR 1926, Subpart P. These standards shall be followed in addition to those outlined in EM 385-1-1.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION (NOT APPLICABLE)

-- End of Section --

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SECTION 01451A

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07/01; Omaha Rev. 05/02

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SECTION 01451A

CONTRACTOR QUALITY CONTROL
07/01; Omaha Rev. 05/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 3740	(2001) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction
ASTM E 329	(2000b) 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, and all costs associated therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause titled "Inspection of Construction." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract. The site project superintendent in this context shall be the highest level manager responsible for the overall construction activities at the site, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Contracting Officer, and shall be responsible for all construction and construction related activities at the site.

3.2 QUALITY CONTROL PLAN

The Contractor shall furnish for review by the Government, not later than 10 days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction." The plan shall identify personnel, procedures, control, instructions, tests, records, and forms to be used. The Government will consider an interim plan for the first 30 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

3.2.1 Content of the CQC Plan

The CQC Plan shall 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 shall implement the three phase control system for all aspects of the work specified. The staff shall include a CQC System Manager who shall report to the project 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. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall also be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01330 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 will be approved by the Contracting Officer.)
- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified

deficiencies have been corrected.

- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there 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 his 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, the Contractor shall 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, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. The CQC Plan shall be submitted for review a minimum of 10 calendar days prior to the Coordination Meeting.

During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting shall be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

3.4 QUALITY CONTROL ORGANIZATION

3.4.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager and sufficient number of additional qualified personnel to ensure safety and contract compliance. The Safety and Health Manager shall receive direction and authority from the CQC System Manager and shall 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 shall maintain 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 shall be subject to acceptance by the Contracting Officer. The Contractor shall provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Complete records of all letters, material submittals, show drawing submittals, schedules and all other project documentation shall be promptly furnished to the CQC organization by the Contractor. The CQC organization shall be 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

The Contractor shall identify as CQC System Manager an individual within the onsite work organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall be a construction person with a minimum of 5 years in related work. This CQC System Manager shall be on the site at all times during construction and shall be employed by the prime Contractor. The CQC System Manager shall be assigned as System Manager but may have duties as project superintendent in addition to quality control. An alternate for the CQC System Manager shall be identified in the plan to serve in the event of the System Manager's absence. The requirements for the alternate shall be the same as for the designated CQC System Manager.

3.4.3 CQC Personnel

A staff shall be maintained under the direction of the CQC system manager to perform all QC activities. The staff must be of sufficient size to ensure adequate QC coverage of all work phases, work shifts, and work crews involved in the construction. These personnel may perform other duties, but must be fully qualified by experience and technical training to perform their assigned QC responsibilities and must be allowed sufficient time to carry out these responsibilities. The QC plan will clearly state the duties and responsibilities of each staff member.

3.4.4 Additional Requirement

In addition to the above experience and education requirements the CQC System Manager shall have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered at each of the four area offices in the Omaha District according to the following revolving training schedule:

<u>Badger Area</u>	First Session	Between 15 & 25 April
	Second Session	Between 15 & 25 October
Point of Contact	Roy Brewer	(319) 753-1386
<u>Black Hills Area</u>	First Session	Between 1 & 10 March
	Second Session	Between 1 & 10 September
Point of Contact	Dwight Pochant	(605) 923-2983
<u>Fort Crook Area</u>	First Session	Between 15 & 25 January
	Second Session	Between 15 & 25 July
Point of Contact	Al Kreisler	(402) 293-2540

<u>Rocky Mountain</u>	First Session	Between 1 & 10 June
	Second Session	Between 1 & 10 December
Point of Contact	Paul Jendzejc	(719) 556-4184

The exact date and location for the sessions will be determined approximately 30 days in advance of the training. The cost of training is presently established at \$50 to be paid by each student in advance of the training. For information about a particular session, the best source is the point of contact listed above.

3.4.5 Organizational Changes

The Contractor shall maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, the Contractor shall 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, shall be made as specified in Section 01330 SUBMITTAL PROCEDURES. The CQC organization shall be responsible for certifying that all submittals and deliverables are in compliance with the contract requirements.

3.6 CONTROL

Contractor Quality Control 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 shall be conducted by the CQC System Manager for each definable feature of work as follows:

3.6.1 Preparatory Phase

This phase shall be 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 shall include:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. Prior to the preparatory meeting for each definable feature of work, the Contractor shall provide all technical references (i.e. building codes, life safety codes, etc.) referenced in the project specifications for feature(s) of work being addressed at the preparatory meeting. These technical references shall be onsite and available for use by Contractor and Government personnel before the preparatory meeting is held and maintained until the feature(s) of work is/are accepted by the Government.
- b. A review of the contract drawings.
- c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. 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. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government shall be notified at least 48 hours in advance of beginning the preparatory control phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.6.2 Initial Phase

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

- a. A check of 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.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with required sample panels 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 shall be notified at least 48 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.
- g. The initial phase should be repeated for each new crew to work

onsite, or any time acceptable specified quality standards are not being met.

3.6.3 Follow-up Phase

Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not build upon nor conceal non-conforming work.

3.6.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, 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

The Contractor shall perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, the Contractor shall furnish to the Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and/or acceptance tests when specified. The Contractor shall procure the services of a Corps of Engineers approved testing laboratory or establish an approved testing laboratory at the project site. The Contractor shall perform the following activities and record and provide the following data:

- a. Verify that testing procedures comply with contract requirements.
- b. Verify that facilities and testing equipment are available and comply with testing standards.
- c. Check test instrument calibration data against certified standards.
- d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, have been prepared.
- e. Results of all tests taken, both passing and failing tests, shall be recorded on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test shall be given. If approved by the Contracting Officer, actual test reports may be submitted later with a reference to the test number and date taken. An information copy of tests performed by an offsite or commercial test facility shall be provided directly to the Contracting Officer. Failure to submit timely test reports as stated may result in nonpayment for related work performed and disapproval of the test facility for this contract.

3.7.2 Testing Laboratories

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, concrete, asphalt, and steel shall meet criteria detailed in ASTM D 3740 and ASTM E 329.

3.7.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed the actual cost for the recheck 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.

3.7.4 Furnishing or Transportation of Samples for Testing

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

For delivery by mail: Commander and Director
U.S. Army Engineer Waterways Experiment Station
Attn: CEWES-GS
3909 Hallsferry Road
Vicksburg, Mississippi 39180-6199

For other deliveries: Commander and Director
U.S. Army Engineer Waterways Experiment Station
Attn: CEWES-GS
3909 Hallsferry Road
Vicksburg, Mississippi 39180-6199

Coordination for each specific test, exact delivery location, and dates will be made through the Resident or Area (as directed) Office.

3.8 COMPLETION INSPECTION

3.8.1 Punch-Out Inspection

Near the end of the work, or any increment of the work established by a time stated in the Special Clause, "Commencement, Prosecution, and Completion of Work", or by the specifications, the CQC Manager shall conduct an inspection of the work. A punch list of items which do not conform to the approved drawings and specifications shall be prepared and included in the CQC documentation, as required by paragraph DOCUMENTATION. The list of deficiencies shall include the estimated date by which the

deficiencies will be corrected. The CQC System Manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected.

Once this is accomplished, the Contractor shall 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 facility is complete and ready to be occupied. A Government Pre-Final Punch List may be developed as a result of this inspection. The Contractor's CQC System Manager shall ensure that all items on this list have been corrected before notifying the Government, so that a Final inspection with the customer can be scheduled. Any items noted on the Pre-Final inspection shall be corrected in a timely manner. These inspections and any deficiency corrections required by this paragraph shall 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 shall be in attendance at the final acceptance inspection. Additional Government personnel including, but not limited to, those from Base/Post Civil Facility Engineer user groups, and major commands 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. Notice shall be given to the Contracting Officer at least 14 days prior to the final acceptance inspection and shall 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

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

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, 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/or control activities performed with results and references to specifications/drawings requirements. The control phase shall be identified (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/or specifications.
- j. Contractor's verification statement.

These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Contracting Officer's Representative on the first day following the date(s) covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every 7 days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC System Manager. The report from the CQC System Manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

3.10 SAMPLE FORMS

Sample forms 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. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

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SECTION 01500

MEASUREMENT AND PAYMENT

May 2001

PART 1 GENERAL

This section covers the methods and procedures which will be used to measure the Contractor's work and to effect payment. The general outline of the principal features of each item as listed does not relieve the Contractor from the responsibility of thoroughly investigating the drawings and specifications to determine the scope of work under the entire contract. Payment to the Contractor in the amounts based on the quantities of work as measured in accordance with the specified methods of measurement and the prices stipulated in the accepted proposal will constitute complete compensation for all work shown on the drawings, provided in the specifications or other contract documents and all costs of accepting the general risks, liabilities and obligations expressed or implied. Payment under all items shall include, but not necessarily be limited to, compensation for furnishing all supervision, labor, equipment and materials and services (including overhead and profit), as well as performing all work required to accomplish and complete the work specified under each item and all other work required.

PART 2 WORK MEASUREMENT

2.1 LUMP SUM ITEMS

The quantities under lump sum items will not be measured except for the purpose of determining reasonable interim payments. Interim payments will be made in accordance with the estimated value of work done as determined by the Contracting Officer's Representative (COR) or as specified in this section, and in accordance with contract clause for payments.

2.2 UNIT PRICE ITEMS

Existing ground levels shall be surveyed prior to any disturbances in accordance with the relevant provisions of these specifications. If excavation surfaces are not clearly shown on the drawings, the Contractor shall obtain clarification from the COR prior to commencement of excavation and/or removal. Interim measurements and payments may be adjusted to account for partially completed work.

PART 3 PAY ITEMS

3.1 EXCAVATION

3.1.1 Work Included

The work includes all material, equipment and labor necessary for excavation of channels. This includes excavation for constructing inlet structures, modifying dikes and providing disposal areas for salvaged stone (including construction or reinforcement of existing channel stabilization structures). This also would cover any excavation needed to lower spur dikes. This work category shall not include removal of stone, which is covered in section 3.4.

3.1.2 Measurement

The volume of excavated material to be paid for as excavation will be measured between the original surface and the surface of the specified grade lines. The volume shall be determined from cross sections of the area, taken after clearing and grubbing operations have been completed and immediately before and after grading. Measurements will be made to the nearest one-tenth foot and volume determined to the nearest whole cubic yard. Materials removed by the Contractor below the specified grade line will not be paid for, and the Contractor may be required to rebuild the foundation to the specified grade lines to avoid overruns in structure materials.

3.1.3 Payment

Applicable unit price times the number of cubic yards of excavated material.

3.2 PLACE QUARRIED STONE AT INLET STRUCTURES

3.2.1 Work Included

This item shall include but not be limited to labor, equipment, materials, gradation testing on new stone, and performing all operations in connection with constructing both the upper and lower inlet structures. This will include all material, equipment and labor of furnishing, transporting and placing the stone as directed by the drawings and specifications.

3.2.2 Measurement

This item will be based on tonnage of quarried stone. Although some salvaged stone will be allowed as a bedding course, that salvaged material will be accounted for in the line item for placement of salvaged stone.

a. Stone shall be weighed for final payment immediately prior to placement by one of the following methods at the option of the Contractor and with approval of the Contracting Officer (CO). The materials shall be weighed to the nearest 20 pounds and the net weight reduced to the nearest hundredth of a ton.

b. Stone delivered at the site of the work may be weighed on public scales which have been approved by the COR and which have been certified by the State wherein the scales are located. If public scales are not available, the weighing service may be supplied by an independent professional organization approved by the COR. The Contractor shall furnish the COR a copy of each printed weigh bill, when self-printing scales are used, or a copy of the weigh bill signed by the weigh master as each load is delivered to the jobsite. (Each weigh bill shall contain the following: date, unit number, time, tare weight, gross weight, net weight, name of project, contract number, name of Contractor, and signature of weigher.) All costs for weighing the materials shall be borne by the Contractor.

3.2.3 Payment

Payment for Quarried Stone shall be based on the unit price per ton as indicated on the Bidding Schedule multiplied by the number of tons needed to complete the required work according to the drawings and specifications.

3.3 PLACE SALVAGED STONE AT INLET STRUCTURES

3.3.1 Work Included

The work will comprise placement of a foundation course of salvaged stone at the two inlet structures, as directed in the project plans.

3.3.2 Measurement

Cubic yards, based on measurements at the inlets.

3.3.3 Payment

Applicable unit price times the number of cubic yards of stone acceptably placed.

3.4 REMOVE STONE FROM EXISTING STRUCTURES

3.4.1 Work Included

This item shall include but is not limited to labor, equipment, materials needed to lower the indicated areas of the revetment and dikes through the removal of existing stone.

3.4.2 Measurement

This item will not be measured. Payment quantity will be based on the volume specified herein, unless observations as the dikes are lowered indicate a substantial variation exists, in which case the volume would be determined from actual measurements. The measurement process used must be satisfactory to and approved by the CO.

3.4.3 Payment

Applicable unit price times the number of cubic yards of stone removed.

3.5 CLEAR PILINGS FROM LOWERED STRUCTURES

3.5.1 Work Included

Wooden pilings and stringers will be broken off or removed at the dikes where the new side channels will cross them. The pilings are to be left in place at the eight spur dikes to be lowered along the main channel, to the extent practical.

3.5.2 Measurement

Lump sum.

3.5.3 Payment

Payment for this item shall be a lump sum bid, on a progressive basis, based on the percentage of work completed.

3.6 PLACEMENT OF SALVAGED STONE.

3.6.1 Work Included

The work includes all material, equipment and labor for excavation of existing stone, hauling, handling and placing of salvaged stone as specified herein (besides at the inlet structures as noted in Section 3.3) and shown on the drawings. This item will cover the stone that is placed as a secondary feature after it is removed from the revetment and dikes.

Its condition is not significant, as long as the majority of the material placed in the designated areas is identifiable as stone (as opposed to sand, earth, etc.)

3.6.2 Measurement and Payment

Lump Sum.

3.7 CONSTRUCT NORTH ACCESS ROAD

3.7.1 Work Included

This item will cover the north road and westside trail, along with the culverts called for in the drawings and specifications.

3.7.2 Measurement

Lump Sum

3.7.3 Payment

Payment for this item shall be a lump sum bid, on a progressive basis, based on the percentage of work completed.

3.8 CULVERTS

3.8.1 Work Included

This item includes two culvert installations, one at 18-inch diameter, and the other using two 24-inch culverts, as indicated in the drawings.

3.8.2 Measurement

Linear Feet for each diameter

3.8.3 Payment

Applicable unit price times the number of linear feet of culvert, for each diameter.

3.9 SEEDING

3.9.1 Work Included

This work shall include but not be limited to all materials, equipment, labor and all other incidental work needed for seeding of disturbed areas, and the seeding directed by these drawings and specifications.

3.9.2 Measurement and Payment

Lump Sum.

3.10 ALL REMAINING WORK

3.10.1 Work Included

The work of this item shall include but not be limited to labor and equipment needed for the any work required for project completion which is not specifically listed in these specifications as separate payment items, such as clearing, grubbing, stripping and tree planting.

3.10.2 Measurement and Payment:
Lump Sum

3.11 RESURFACE NORTH ROAD (INCLUDING WESTSIDE TRAIL)

3.11.1 Work Included

The work includes all material, equipment and labor of furnishing, hauling, handling and placing of aggregate surface course on the north access road, along with the access road that runs along most of the west project boundary south of the north access road, as specified herein and shown on the drawings.

3.11.2 Measurement and Payment:
Lump sum.

3.12 CONSTRUCT SOUTH ACCESS ROAD

3.12.1 Work Included

The work includes all material, equipment and labor for constructing the south access road, culvert and gate, as specified herein and shown on the drawings.

3.12.2 Measurement and Payment:
Lump sum.

-- End of Section --

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SECTION 01562

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08/99

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SECTION 01562

(NEBRASKA) NPDES PERMIT REQUIREMENTS
FOR STORM WATER DISCHARGES
FROM CONSTRUCTION SITES
08/99

PART 1 GENERAL

Attachments: Copy of the "Authorization To Discharge Under The State Of
Nebraska
National Pollutant Discharge Elimination System (NPDES)
NPDES Permit Number NER100000

1.1 REFERENCES (NOT APPLICABLE)

1.2 SUBMITTALS

Government approval is required for submittals with a "GA" designation;
submittals having an "FIO" designation are for information only. The
following shall be submitted in accordance with Section 01330 SUBMITTAL
PROCEDURES:

SD-05 Design Data

Notice of Intent; FIO.

Notice of Start-up of Construction Activity; FIO.

Storm Water Pollution Prevention Plan; FIO.

Notice of Completion of Construction Activity; FIO\.

SD-06 Test Reports

Records; FIO.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 GENERAL

The Contractor shall be responsible for implementing the terms and
requirements of the attached "Authorization To Discharge Under The State Of
Nebraska National Pollutant Discharge Elimination System (NPDES)", Permit
No. NER100000, for storm water discharges from construction sites. The
Contractor shall be considered the "permittee". All submissions to the
state shall be by certified mail. Copies of the return receipt for each
submission shall be included with the submittal to the Contracting
Officer's Representative (COR). Designated critical habitat and/or listed
species are located in the project area. However, storm water discharges
and storm water discharge-related activities are not likely to adversely

affect the listed species and/or critical habitat.

3.2 IMPLEMENTATION

3.2.1 Notice of Intent

The Contractor shall complete and submit a Notice of Intent (NOI) in accordance with NPDES Permit No. NER100000. A copy of the submitted NOI shall be furnished to the COR at least 10 calendar days prior to the commencement of construction activities.

3.2.2 Notice of Start-up of Construction Activity

The Contractor shall complete and submit a Notice of Start-up of Construction Activity in accordance with NPDES Permit No. NER100000. A copy of the submitted Notice of Start-up of Construction Activity shall be furnished to the COR not more than 10 calendar days after commencement of construction activities.

3.2.3 Storm Water Pollution Prevention Plan

The Contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with NPDES Permit No. NER100000. Any temporary or permanent erosion and sedimentation control measures shown on the drawings shall be incorporated into the Contractor's SWPPP. A copy of the SWPPP shall be submitted to the COR at least 10 calendar days prior to the commencement of construction activities. Copies of all revisions to the SWPPP shall also be submitted.

3.2.4 Inspections and Record Keeping

The Contractor shall be responsible for all inspections, maintenance, and record keeping required under the NPDES Permit No. NER100000. Copies of all inspection and maintenance records shall be furnished to the COR.

3.2.5 Notice of Completion of Construction Activity

The Contractor shall complete and submit a Notice of Completion of Construction Activity in accordance with NPDES Permit No. NER100000. A copy of the submitted Notice of Start-up of Construction Activity shall be furnished to the COR not more than 10 calendar days after submission to the State.

3.2.6 Renotification

If the current permit expires prior to completion of construction, the Contractor shall apply for a reissuance of NPDES Permit No. NER100000. A copy of all submissions to the State shall be furnished to the COR.

-- End of Section --

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STATE OF NEBRASKA



E. Benjamin Nelson
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

AUTHORIZATION TO DISCHARGE UNDER THE STATE OF NEBRASKA NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

NPDES Permit Number NER100000

A general NPDES permit for
storm water discharges from construction sites
to waters of the State of Nebraska

In compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251 et. seq. as amended to date), the Nebraska Environmental Protection Act (Neb. Rev. Stat. Secs. 81-1501 et. seq. as amended to date), and the Rules and Regulations promulgated pursuant to these Acts, the Nebraska Department of Environmental Quality is hereby issuing this general permit authorizing the discharge of pollutants to waters of the State. This general permit establishes prohibitions, limitations and other conditions pertaining to these discharges. This general permit does not relieve permittees of other duties and responsibilities under the Nebraska Environmental Protection Act, as amended, or established by regulations promulgated pursuant thereto.

This permit shall become effective on August 1, 1997.

This permit and the authorization to discharge shall expire at midnight, July 31, 2002.

Pursuant to the Delegation Memorandum dated January 30, 1995 and signed by the Director, the undersigned hereby executes this document on behalf of the Director.

Signed this 9th day of July, 1997

Handwritten signature of Patrick W. Rice in cursive script.

Patrick W. Rice, Assistant Director

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B. APPLICABILITY

1. Discharges Authorized by this Permit

- a. Contingent upon the "Notification and Discharge Authorization Procedures" set forth in Section C, this permit authorizes the discharge of storm water from construction or development sites where clearing, grading or excavation is conducted on an area of 5 acres or more as part of a common plan of development or sale (i.e., industrial facilities identified in subparagraph "x" of the definition of "storm water discharges associated with industrial activity" as defined in NDEQ Title 119 - Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System).
- b. This permit may also be used to authorize the discharge of storm water from other construction or development sites subject to clearing, grading or excavation that the Director feels require a permit pursuant to Chapter 2 001.06D of NDEQ Title 119. In these instances, written discharge authorization is required (See Sections C.4.a and C.4.h).

2. Area of Application

This permit has application throughout the State of Nebraska.

Special authorization procedures apply to sites where discharges to certain State Resource Waters and public drinking water supplies are proposed. These waters are identified in Appendix B and the discharge authorization procedures are described in Section C.4.e.

3. Limitations on Coverage

This permit does not authorize the following types of storm water discharges:

- a. those regulated by an existing NPDES permit,
- b. those for which storm water effluent guideline limitations apply,
- c. those the Director has determined to have reasonable potential to violate a surface or ground water quality standard,
- d. those adversely effecting a listed endangered or threatened species or its critical habitat,
- e. those from an operating landfill, or
- f. those which the Director determines would be more effectively regulated with a site specific, area specific or a basin specific permit.

4. Period of Coverage

- a. Coverage shall commence at the time discharge authorization is granted (See Section C.4) and shall continue for a period lasting at least 180 days after the site has been stabilized with perennial seeding, paving, rock or other permanent protective cover on 95% or more of the site.
- b. The Department can extend coverage under the permit beyond the time period specified in Section B.4.a above if excessive erosion problems remain at the site.

5. Sites Authorized Under the Previous General Permit

Sites authorized to discharge under the previously issued NPDES General Permit (i.e., NPDES Permit Number NER100000; Effective Date July 1, 1994; Expiration Date May 26, 1997) shall have authorization to discharge under this permit subject to the terms and conditions set forth below (i.e., Sections B.5.a through B.5.c).

- a. Sites authorized to discharge under the previous permit shall be considered in compliance with this permit for a period of up to 180 days after the effective date of this permit, provided the permittee complies with all of the terms and conditions of the previous general permit. If a project site can not be completed and stabilized within this 180 day time period, the permittee shall file a Notice of intent as required in Sections C.1 and C.2 of this permit, and ensure their Storm Water Pollution Prevention Plan is in compliance with Section D of this permit.
- b. The provisions of Section B.5.a are site specific and do not necessarily extend to permittees that may have been authorized to discharge from more than one site under the previous permit (i.e., the permittee must obtain site specific written approval for coverage of a site under the previously issued permit for Section B.5.a.).
- c. Section B.4.b applies to sites previously authorized to discharge under the previous permit (i.e., the Department can extend coverage under this permit if excessive erosion problems remain at the site). If the period of coverage is extended, the permittee may be required to submit a Notice of Intent as set forth in Section B.5.a.

C. NOTIFICATION AND DISCHARGE AUTHORIZATION PROCEDURES

1. Submission of Initial Notification.

Authorization to discharge under this general may be applied for by submitting a Notice of Intent (NOI) using NPDES form CSW-NOI, or an equivalent format approved by the Department. NPDES form CSW-NOI can be obtained by contacting the Nebraska Department of Environmental Quality. The address and telephone number current at the time of permit issuance are provided below.

Permits and Compliance Section
Nebraska Department of Environmental Quality
P.O. Box 98922
1200 N Street, The Atrium, Suite 400
Lincoln, Nebraska 68509-8922
Telephone (402) 471-4239

2. Contents of the Notice of Intent.

Appendix C contains the description of the information required to be submitted in the NOI.

3. Additional Notification Requirements that Apply to Some Sites

a. The Department may request additional information from the source:

i. to facilitate the review of the NOI;

ii. to finalize a determination related to the granting of a discharge authorization; or

iii. to determine whether a site specific, area specific or a basin specific permit application may be required.

b. When storm water is discharged through a large or medium municipal separate storm sewer system, applicants shall concurrently submit a copy of NPDES form CSW-NOI (or other appropriate notification form) to the operator of the municipal separate storm sewer system through which they discharge. (A large or medium municipal separate storm sewer system is defined as a system located in an incorporated city with a population of 100,000 or more. This includes the cities of Lincoln and Omaha.)

c. Other government agencies (e.g., the US Army Corps of Engineers, Local City/County Government, or the local Natural Resource District) may have additional notification requirements. Submittal of the NPDES form CSW-NOI does not relieve the applicant of responsibility to comply with the requirements of other government agencies.

4. Authorization to Discharge

- a. Except as provided in Sections C.4.b through C.4.i, C.5 or C.6, discharge authorization is granted 7 days after the Department receives the complete NOI. Discharge authorizations are limited to the location(s) identified in the NOI.
- b. The Department may act to grant an applicant authorization to discharge at any time following the receipt of a completed NOI by providing a written notification to the permittee (e.g., prior to end of the 7 day review period specified in Section C.4.a).
- c. If the Department requires additional information to be submitted as part of the NOI process, authorization to discharge can not be granted until after the additional information is received, or until the issue prompting the request is resolved. The 7 day period specified in Section C.4.a, restarts each time additional information is received by the Department.
- d. The Department may extend the 7 day authorization period set forth in Section C.4.a and C.4.c. The applicant shall be notified of the extension within 7 days after the application is received by the Department. The initial notification may be made verbally.
- e. Written discharge authorization from the Department is required for discharges to the State Resource Waters and Public Drinking Water Supplies identified in Appendix B.
- f. The Department may deny authorization to discharge under the terms and conditions of this permit by providing the applicant with a written notice of the denial and an explanation of the basis for the determination.
- g. The Department may require the submittal of an application for a site specific or an NOI for an alternative general permit. The Department shall provide an explanation of the basis for any such request.
- h. If authorization to discharge under the conditions of this permit is sought pursuant to the Director's decision to require NPDES discharge authorization pursuant to Chapter 2 001.06D of NDEQ Title 119, written discharge authorization is required (See Applicability, Section B.1.b).
- i. All permittees must meet the requirements set forth in Section B of this permit. Failure to do so shall negate any authorization to discharge granted pursuant to this subsection (i.e., Section C.4).

5. Revocation of Discharge Authorization

The Director may revoke a permittee's authorization to discharge under the terms and conditions of this permit for any of the following:

- a. the discharge has a reasonable potential to violate a surface or ground water quality standard;
- b. the discharge is adversely affecting a listed endangered or threatened species or its critical habitat; and

- c. a permittee fails to submit an alternative permit application requested pursuant to Section C.6.

6. Requiring an Alternative Permit and Application

- a. The Director may require any person authorized to discharge under the terms and conditions of this permit to apply for and obtain either a site specific NPDES permit or an alternative NPDES general permit. A written notice that an alternative permit application is required shall be provided by the Department. This notice shall include:
 - i. a brief explanation of the basis for the determination;
 - ii. an application or NOI form for the alternative permit; and
 - iii. a deadline for submitting the application for the alternative permit.

The Director may grant additional time for the submittal of the alternative application following the initial notice described above.

- b. Conditions that may constitute a basis for requesting an alternative application include, but are not limited to:
 - i. the discharge is a significant contributor of pollution;
 - ii. the discharger is not in compliance with the terms and conditions of the permit;
 - iii. additional pollution control or prevention technology have become available;
 - iv. the promulgation of new effluent limitations that apply to the source;
 - v. the approval of a water quality management plan containing requirements applicable to the source;
 - vi. the identification of conditions or pollutant sources not previously recognized; and
 - vii. the issuance of an alternative general permit that applies to the discharge.
- c. Authorization to discharge under the terms and conditions of this permit shall be terminated upon the issuance of the alternative permit or the granting of discharge authorization under another alternative general permit.

7. Notification of Project Start-up and Completion

The permittee shall notify the Department in writing of project start-up and completion as set forth below. Notification forms are included as an attachment to this permit.

- a. The permittee shall provide the Department with written notification of the start of construction activities not later than 7 days after construction begins. If activities commence within 30 days of the date submitted on or with the NOI, further start-up notification is not required.
- b. The permittee shall notify the Department in writing within 30 days after the site is 95% stabilized, and provide a proposed date for termination of coverage under the permit (See Section B.4: coverage under the permit continues at least 6 months after the site has been stabilized.).
- c. Public road maintenance and construction activities are exempt from these start-up and completion reporting requirements provided a planned schedule of activities is submitted at least annually as an attachment to the CSW-NOI form. Other permittees that carrying out routine maintenance and construction activities on utility and transportation right-of-ways may be granted a similar exemption on a case-by-case basis.

D. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

1. General

- a. The permittee shall develop and implement a SWPPP to:
 - i. minimize erosion on disturbed areas;
 - ii. minimize the discharge of sediment and other pollutants in storm water runoff; and
 - iii. maintain compliance with the requirements of this permit.
- b. The SWPPP shall be implemented either prior to or concurrent with the initiation of construction activity. SWPPP activities shall be maintained throughout the period of coverage under this permit as set forth in Section B.4.
- c. An updated copy of the SWPPP shall be available on-site at all times that work is being performed. The persons and/or subcontractors responsible for carrying out duties pursuant to the SWPPP shall be properly trained and kept informed of their responsibilities.
- d. The permittee shall make the SWPPP available for review by the Director or an authorized representative during any on-site inspection. The permittee shall provide copies of the SWPPP document to the Department within seven days after receiving a written request.

- e. The SWPPP shall be dynamic. If deficiencies arise during the course of the project, the permittee shall implement effective corrective actions that may require modification of the SWPPP. This requirement does not circumvent the permittee's responsibility to obtain approval for modifications that may concurrently fall under the jurisdiction of other governmental authorities (e.g., local construction or grading requirements). This requirement is also not an affirmative defense for implementing ineffective or less effective control measures.
 - f. The Department may require revisions to be made to the SWPPP :
 - i. if it is not effective in minimizing erosion or the release storm water pollutants from the site;
 - ii. if more effective procedures are available and practical;
 - iii. if previous experience has shown the control methods specified have proven to be inadequate in similar circumstances; or
 - iv. to meet basin specific water quality goals.
2. Content of the Storm Water Pollution Prevention Plan
- The following items shall be incorporated into the SWPPP.
- a. One or more site maps of the construction site showing the location of disturbed areas, existing and post-construction contours, storm water outfalls and pollution control structures. The map or maps submitted with the NOI may be used for this purpose provided copies are available at the construction site.
 - b. A proposed schedule for the construction project identifying the construction phases and the implementation of pollution prevention activities (e.g., installation of erosion control structures and sedimentation basins, initial grading, temporary seeding, utility installation, final grading, paving, and permanent seeding).
 - c. An Erosion and Sediment Control Plan that provides sufficient detail so that the implementing personnel will be able to properly implement the pollution control and prevention practices to be used at the site. See Section D.3 for detailed requirements for an Erosion and Sediment Control Plan.
 - d. A Spill Prevention and Response Plan that addresses fueling, maintenance or storage areas on-site. The plan shall comply with the requirements of Chapter 18 of NDEQ Title 126 - Rules and Regulations Pertaining to the Management of Wastes (Contact the Department at the address or telephone number in Section C.1 for a current copy of this regulation.).

- e. Any wastes present or generated at the site shall be disposed of in compliance with Department regulations. Regulations that may have application in this respect include, but are not necessarily limited to:

NDEQ Title 119 - Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (Disposal of sewage sludge);

NDEQ Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska;

NDEQ Title 129 - Nebraska Air Quality Regulations (Prohibits open burning in most instances);

NDEQ Title 130 - Rules and Regulations Pertaining to Livestock Waste Control; and

NDEQ Title 132 - Integrated Solid Waste Management Regulations.

- f. Entrances and exits shall be adequately stabilized so as to prevent excessive tracking of sediment onto paved or public roadways. This shall include, where necessary, graveling access entryways, exits, and unpaved roads on the site.

3. Erosion and Sediment Control Plan Requirements

The permittee shall incorporate erosion control and sediment retention practices into the SWPPP and implement said practices at sites authorized to discharge storm water under the provisions of this permit. The erosion control practices utilized shall consider site specific variables including slope, soil types, the size of the project, the duration of construction activities, the proximity of perennial and seasonal streams, and the existence of impounded waters downstream of the project. The controls utilized may vary from site-to-site, but the controls used shall be effective in minimizing erosion and sediment release from the site, and in protecting the water quality in the receiving stream or water body.

The existence of downstream lakes or other impounded waters increase water quality concerns relative to sediment release. In these instances, more stringent erosion and sediment controls may need to be implemented.

The permittee shall upgrade the Erosion and Sediment Control Plan and implement additional controls, if existing controls prove inadequate in minimizing erosion and sediment releases, or in protecting the water quality of the receiving stream or water body. The permittee shall comply with Department requests to implement additional controls to minimize erosion and sediment releases, and to protect receiving water bodies.

All of the following practices shall be considered for inclusion in Erosion and Sediment Control Plans and for implementation at construction sites covered under this permit. Note: the Department may require modification of the SWPPP pursuant to Section D.1.f of this permit.

- a. Construction practices and structural controls to slow storm water run off and minimize erosion from the site.

Practices and controls that should be considered for implementation include, but are not limited to, the following:

- i. horizontal slope grading;

- ii. temporary or permanent terraces, berms, cuts or other physical structures placed horizontal to sloped surfaces;
 - iii. silt fence, bale barriers, check dams or other physical barriers placed at intervals in drainage ways, on sloped surfaces and at property boundaries;
 - iv. geotextile mats, rip rock or other methods to prevent erosion in drainage ways and below conduit outlets; and
 - v. storm drain inlet protection (i.e., gravel filter or silt fence).
- b. The scheduling of construction activities so as to minimize the extent and time that soils are left unstabilized.

This shall include, when possible, phased construction planning so as to minimize the area of the site that is not stabilized by vegetative cover, or other temporary or permanent soil covers (e.g., pavement, mulch, or geotextile mats).

The construction schedule shall take into account areas within the construction site that may be available for reseeding prior to the completion of the overall project (See Section D.3.c.).

Construction activity scheduling shall specify an appropriate time table for initiating sediment retention and erosion controls. When possible, sediment retention controls shall be installed prior to the initiation of clearing and grading activities, and erosion controls shall be implemented concurrent with the initiation of construction activity.

- c. The use of existing vegetation and revegetation.

When possible, existing vegetative covers should be left undisturbed. When possible, vegetative strips shall be maintained on the down gradient perimeter of sites, and adjacent to waterways and drainage ways that are within the site.

Temporary or permanent seeding shall be established as soon as possible after grading and clearing activities are completed, and during interim periods on areas that are not being actively worked. Whenever exposed soils are not to be graded for 30 days or more, temporary or permanent seeding needs to be initiated, unless other stabilization methods are used or such need can be justified as unnecessary due to mitigating conditions present at the site. In this latter regard, the need for such temporary seeding may be contingent on such factors as the slope of exposed and adjacent areas, the size of the exposed area, the existence of vegetative buffer zones, the potential to impact streams or impounded waters, seasonal considerations, and/or the use of alternative erosion or sediment control methods. If temporary seeding is not used to stabilize exposed soils that are not to be graded for 30 days or more, the Erosion and Sediment Control Plan shall specify the alternative methods used to control erosion and sediment release, or contain an explanation of why such controls are not necessary.

d. Contingencies for planned and unplanned work stoppages.

The Erosion and Sediment Control Plan needs to address requirements for stabilizing exposed slopes and stock piles (e.g., the installation of terraces or berms, temporary seeding, etc.) if work on the site is stopped. In instances, where the original project schedule is disrupted, the Erosion and Sediment Control Plan may need to be modified to prevent erosion on exposed soils where grading has been temporarily or permanently discontinued. See Section D.3.c above concerning the use of temporary seeding when exposed soils are not to be graded for 30 days or more.

e. Storm detention basins.

The need for storm water detention basins is contingent upon the area disturbed and the slope of the site. In general, storm water detention basins need to be used in disturbed drainage areas of 5 acres or more in size. Where slopes are equal to or steeper than 3:1, storm basins may be required for smaller drainage areas. The use of storm water detention basins does not circumvent the need to implement the erosion and sediment control practices previously cited. Many areas of Nebraska have clay soils and when erosion occurs suspended clay particles are not efficiently captured in storm water detention basins.

4. Erosion and Sediment Control Design Specifications

Physical erosion and sediment control structures used at construction sites covered under this permit shall comply with the design standards specified in one of the manuals listed below, unless alternative designs are approved or required by the Department.

a. City of Omaha Soil Erosion and Sediment Control

b. The Lower Platte South Natural Resource District; A Manual of: Erosion and Sediment Control and Stormwater Management Standards

The City of Omaha manual can be obtained from the Omaha Public Works Department. The Lower Platte South NRD manual is available from the NRD office for projects within their district. Others interested in the manual should contact the Department (See Section C.1).

5. Site Inspection and SWPPP Maintenance Activities

Sites shall be inspected to identify maintenance needs and/or SWPPP deficiencies at least once each month and within 24 hours after each precipitation event of 0.5 inch or more, except when winter freeze-up conditions preclude run-off. This minimum inspection frequency does not relieve the permittee of the maintenance responsibilities during interim periods.

The permittee shall initiate and complete corrective actions to address any maintenance needs or deficiencies as soon as possible. Maintenance and repair of silt fences and bale barriers shall be completed within 24 hours after any deficiencies are discovered.

6. Reporting and Record Keeping Requirements

The permittee shall maintain records of site inspection and maintenance activity until coverage under the permit has been terminated (See Section B.4). The permittee shall provide the Department with access and copies of these records upon request. At a minimum, the following information shall be included in these records:

- a. who conducted the inspections,
- b. when inspections are conducted,
- c. the findings of the inspections,
- d. any corrective actions taken, and
- e. when the corrective actions were implemented.

E. MONITORING REQUIREMENTS AND PROCEDURES

1. Effluent Monitoring Requirements

Routine periodic monitoring of storm water discharges is not required unless requested by the Department. Monitoring may be required by the Department for any of the following reasons:

- a. the identification of potential ground and surface water quality impacts to which the permittee may be contributing,
- b. the failure by the permittee to implement pollution prevention or pollution control procedures set forth in the Storm Water Pollution Prevention Plan,
- c. the recognition of potential pollutant sources during site inspections or investigations, and/or
- d. to obtain information for watershed basin or industry group studies.

2. Sampling and Analytical Protocols

The sampling procedures set forth below shall be used for any storm water monitoring required pursuant to Section E.1, unless the Department specifies or approves alternative procedures.

- a. Samples shall be collected from discharges resulting from a rainfall event that is greater than 0.1 inch in magnitude and occurs at least 72 hours after any previous storm events of 0.1 inch or greater.
- b. Grab samples shall be used for monitoring: pH, temperature, cyanide, total phenols, residual chlorine, petroleum oil, oil and grease, bacterial counts, xylene and compounds in the volatile fraction of the total toxic organic parameter. Grab samples shall be collected in the first 30 minutes of a storm event discharge.

- c. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time the sample is collected), a minimum of one grab sample may be taken.
- d. Flow proportional composite samples shall be used to monitor discharges in all other circumstances (i.e., except as specified in Sections E.2.b and E.2.c). Either continuous or discrete composite sampling may be utilized. If discrete composite sampling is used, at least 3 aliquots shall be obtained and the maximum interval between sampling events shall not exceed 15 minutes. Sampling shall begin within the first 15 minutes of discharge and shall not extend beyond 1 hour, unless there is reason to believe that pollutant discharge rates increase after that time.
- e. Sample analysis procedures shall conform to the procedures specified in Appendix A, Section C.3. Physical observations for such things as odor, turbidity, color, or visible sheens may also be required.

3. Storm Event Monitoring

The permittee shall collect the following information for each storm event monitored pursuant to Section E.1 of this permit, unless the Department specifies otherwise.

- a. The date, duration (in hours), start and ending times, and magnitude (in inches) of the storm event sampled.
- b. The total volume of storm water discharged. The permittee may calculate runoff volume from the magnitude of the storm, the area drained and the runoff coefficient. The calculation method used must be approved by the Department.
- c. The duration between the storm event samples and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

4. Reporting Requirements

The permittee shall submit all storm water monitoring results within 30 days of the event monitored, unless otherwise specified by the Department. All storm water monitoring results shall be submitted using DMR form SW-SEMR (See permit "Attachments"), or equivalent form approved by the Department.

F. OTHER CONDITIONS AND REQUIREMENTS

- 1 Discharges shall be free from toxic substances, which alone or in combination with other substances, create conditions unsuitable for aquatic life.
2. Discharges shall not contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity or deposits, or noxious odors in the receiving stream or waterway.

3. The attachments to this permit (i.e., NPDES forms CSW-NOI, SW-SEMR, CSW-START, and CSW-END) may be modified by the Department provided the notification and reporting requirements set forth in this permit are met. If information is submitted on an outdated form, opportunity to resubmit the information shall be provided the permittee or, at the discretion of the Department, submittals on outdated forms may be accepted.

G. PERIODIC REPORTING AND RECORD KEEPING REQUIREMENTS

This section summarizes reporting and record keeping requirements set forth in other sections of this permit. This section is intended as an aid to the permittee in identifying and complying with these requirements, and contains references to the Sections of the permit where the requirements are set forth.

This summary list does not contain all the reporting and record keeping requirements that may be required by various Department regulations, nor does it relieve the permittee of the responsibility to comply with reporting requirements not listed below.

1. The initial Notification of Intent (Sections B.5 and C.1 thru C.4).
2. Notification of project start-up and completion (Sections C.7).
3. Copies of the SWPPP shall be submitted within 7 days of receiving a written request from the Department (Section D.1.d).
4. Chapter 18 of NDEQ Title 126 - Rules and Regulations Pertaining to the Management of Wastes contains spill reporting requirements. Section D.2.d of this permit requires the Spill Prevention and Response Practices of the SWPPP to comply with this regulation. Appendix A, Section A.6 also contains information on spill reporting.
5. Copies of facility inspection and maintenance activities must be kept until coverage under the permit has expired. Copies of said records shall be furnished to the Department if requested (Section D.5).
6. Monitoring reports on the results of any storm event monitoring activities (Section E.4).
7. In addition to the reporting and record keeping requirements referenced above, Appendix A also contains reporting and record keeping requirements that may apply to some storm water dischargers. References to these requirements are listed below:
 - a. Appendix A, Section B.1. - Duty to Provide Information,
 - b. Appendix A, Sections C.5 & C.6 - Retention of Records and Record Contents,
 - c. Appendix A, Section D.1 - Immediate Notification,
 - d. Appendix A, Section D.2 - 24-Hour Reporting,
 - e. Appendix A, Section D.3 - Written Non-Compliance Notification
 - f. Appendix A, Section D.4 - Quarterly Discharge Monitoring Reports
 - g. Appendix A, Section D.5 - Changes in Discharge
 - h. Appendix A, Section D.6 - Toxic Discharge Reporting Requirements,
 - i. Appendix A, Section D.7 - Changes in Sludge Quality,
 - j. Appendix A, Section D.9. - Transfers
 - k. Appendix A, Section E.2 - Upset Reporting, and
 - l. Appendix A, Section E.3 - Bypass Reporting

APPENDIX A - Standard Conditions for NPDES and NPP Permits.

These general conditions are applicable to all NPDES and NPP permits. These conditions shall not preempt any more stringent requirements found elsewhere in this permit.

A. General Conditions

1. Information Available

All permit applications, fact sheets, permits, discharge data, monitoring reports, and any public comments concerning such shall be available to the public for inspection and copying, unless such information about methods or processes is entitled to protection as trade secrets of the owner or operator under Neb. Rev. Stat. §81-1527, (Cum. Supp. 1992) and Title 115 Chapter 9.

2. Duty to Comply

All authorized discharges shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

The permittee shall comply with all conditions of this permit. Failure to comply with these conditions may be grounds for administrative action or enforcement proceedings including injunctive relief and civil or criminal penalties.

The filing of a request by the permittee for a permit modification, revocation and reissuance, termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize, prevent or correct any adverse impact to the environment resulting from noncompliance with this permit, including such accelerated or additional monitoring as required by the NDEQ to determine the nature and impact of the noncompliant discharge.

4. Permit Actions

This permit may be modified, suspended, revoked or reissued, in part or in whole, in accordance with the regulations set forth in NDEQ Titles 119 and/or 127. In addition, this permit may be modified, revoked and reissued to incorporate standards or limitations issued pursuant to Sections 301(b)(2)(c), 301(b)(2)(d), 304(b)(2), 307(a)(2), or 405(d) of the Clean Water Act, Public Law 100-4 (i.e., industrial categorical standards and municipal sludge regulations) and Title 121.

5. Toxic Pollutants

The permittee shall not discharge pollutants to waters of the State that cause a violation of the standards established in NDEQ Titles 117, 118 or 121. All discharges to surface waters of the State shall be free of toxic (acute or chronic) substances which alone or in combination with other substances, create conditions unsuitable for aquatic life outside the appropriate mixing zone.

Appendix A (continued)

6. Oil and Hazardous Substances/Spill Notification

Nothing in this permit shall preclude the initiation of any legal action or relieve the permittee from any responsibilities, liabilities or penalties under Section 311 of the Clean Water Act. The permittee shall conform to the provisions set forth in NDEQ Title 126 in the event of a release of a reportable quantity of oil or hazardous substances. If the permittee knows, or has reason to believe, that oil or hazardous substances were released at the facility and could enter waters of the State or any of the outfall discharges authorized in this permit, the permittee shall immediately notify the Department of a release of oil or hazardous substances. During Department office hours (i.e., 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays), notification shall be made to the LUST/ER Section (telephone number 402/471-4230). When the LUST/ER Section cannot be contacted, the permittee shall report to the Nebraska State Patrol for referral to the NDEQ Emergency Response Team (telephone number 402/471-4545). It shall be the permittee's responsibility to maintain current telephone numbers necessary to carry out the notification requirements set forth above.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort or any exclusive privileges nor does it authorize any damage to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations.

8. Severability

If any provision of this permit is held invalid, the remainder of this permit shall not be affected.

9. Other Rules and Regulations Liability

The issuance of this permit in no way relieves the obligation of the permittee to comply with other rules and regulations of the Department.

10. Inspection and Entry

The permittee shall allow the Director or his authorized representative, upon the presentation of his identification and at a reasonable time:

- a. to enter upon the permittee's premises where a regulated facility or activity is located or conducted, or records are required to be kept under the terms and conditions of the permit,
- b. to have access to and copy any records required to be kept under the terms and conditions of the permit,
- c. to inspect any facilities, equipment (including monitoring and control), practices or operations regulated or required in the permit, and
- d. to sample or monitor any substances or parameters at any location.

11. Penalties

Violations of the terms and conditions of this permit may result in the initiation of criminal and/or civil actions. Civil penalties can result in fines of up to \$10,000.00 per day [Neb. Rev. Stat. §81-1508, as amended to date. Criminal penalties for willful or negligent violations of this permit may result in penalties of \$10,000.00 per day or by imprisonment. Violations may also result in federal prosecution.

Appendix A (continued)

B. Management Requirements

1. Duty to Provide Information

The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit; or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records retained as a requirement of this permit.

2. Duty to Reapply

The permittee shall apply for a reissuance of this permit, if an activity regulated by this permit is to be continued after the expiration date of this permit. The application shall be submitted at least 180 days before the expiration of this permit on an application form supplied by the Department, as set forth in NDEQ Titles 119 and/or 127.

3. Signatory Requirements

All reports and applications required by this permit or submitted to maintain compliance with this permit, shall be signed and certified as set forth in this section.

a. Permit applications shall be signed by a cognizant official who meets the following criteria:

(1) for a corporation: by a principal executive officer of at least the level of vice-president,

(2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively, or

(3) for a municipality, state, federal or other public facility: by either a principal executive officer or highest ranking elected official.

b. Discharge monitoring reports and other information shall be signed by the cognizant official or by an authorized representative.

c. An authorized representative is designated by the cognizant official. The authorized representative is responsible for the overall operation of the facility (i.e., a plant manager, a well field operator or a wastewater treatment plant superintendent).

d. Any change in the signatories shall be submitted to the Department, in writing, within 30 days after the change.

e. Certification. All applications, reports and information submitted as a requirement of this permit, shall contain the following certification statement:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Appendix A (continued)

C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required within this permit shall be representative of the discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water or substance. Monitoring points shall not be changed without notification to the Department and with the written approval of the Director.

- a. Composite sampling shall be conducted in one of the following manners:
 - (1) continuous discharge - a minimum of one discrete aliquot collected every three hours,
 - (2) less than 24 hours - a minimum of hourly discrete aliquots or a continuously drawn sample shall be collected during the discharge, or
 - (3) batch discharge - a minimum of three discrete aliquots shall be collected during each discharge.
- b. Composite samples shall be collected in one of the following manners:
 - (1) the volume of each aliquot must be proportional to either the waste stream flow at the time of sampling or the total waste stream flow since collection of the previous aliquot,
 - (2) a number of equal volume aliquots taken at varying time intervals in proportion to flow,
 - (3) a sample continuously collected in proportion to flow, and
 - (4) where flow proportional sampling is infeasible or nonrepresentative of the pollutant loadings the Department may approve the use of time composite samples.
- c. Grab samples shall consist of a single aliquot collected over a time period not exceeding 15 minutes.
- d. All sample preservation techniques shall conform to the methods adopted in NDEQ Title 121, Chapter 8, unless:
 - (1) in the case of sludge samples, alternative techniques are specified in the 40 CFR, Part 503, or
 - (2) other procedures are specified in this permit.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be used to insure the accuracy and reliability of measurements. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of +/- 10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references:

- a. "Water Management Manual," U. S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. Available from the U. S. Government Printing Office, Washington, DC 20402. Order by Catalog Number 127.19/2:W29/2, Stock Number S/N 24003-0027.

Appendix A (continued)

- b. "Flow Measurement in Open Channels and Closed Conduits," U. S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October, 1977, 982 pp. Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS Number PB-273 535/5ST.
- c. "NPDES Compliance Sampling Manual," U. S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-51, May, 1988, 140 pp. Available from the General Services Administration (8FFS), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.

3. Test Procedures

Test procedures used for monitoring required by this permit, shall conform to the methods adopted in NDEQ Title 121, Chapter 8 unless:

- a. in the case of sludge samples, alternative techniques are specified in the 40 CFR, Part 503, or
- b. other procedures are specified in this permit.

4. Averaging of Measurements

Averages shall be calculated as an arithmetic mean except:

- a. bacterial counts which shall be calculated as a geometric mean, or
- b. where otherwise specified by the Department.

5. Retention of Records

The permittee shall retain records of all monitoring activities for a period of at least three years (five years for sludge; see below) as set forth in NDEQ Titles 119 and/or 127. The types of records that must be retained include, but are not limited to:

- a. calibration and maintenance records,
- b. original strip chart recordings,
- c. copies of all reports required by this permit,
- d. monitoring records and information, and
- e. electronically readable data.

The permittee shall retain records of monitoring required by this permit that are related to sludge use and disposal for a period of five years or longer, as required in 40 CFR, Part 503.

6. Record Contents

Records of sampling or monitoring information shall include:

- a. the date(s), exact place, time and methods of sampling or measurements,
- b. the name(s) of the individual(s) who performed the sampling or measurements,

Appendix A (continued)

- c. the date(s) the analyses were performed,
- d. the individual(s) who performed the analyses,
- e. the analytical techniques or methods used,
- f. the results of such analyses, and
- g. laboratory data, bench sheets and other required information.

D. Reporting Requirements

1. Immediate Notification

- a. NPP permittees shall report immediately to the publicly owned treatment works (POTW), any discharge to the POTW that may result in a violation of NDEQ Title 127, Chapter 3.
- b. All permittees shall report immediately to the NDEQ:
 - (1) discharges of oil or hazardous substances which threaten waters of the State or public health and welfare, and
 - (2) discharges causing in-stream toxicity (i.e., a fish kill) or an immediate threat to human health.

Initial notification may be verbal. A written noncompliance notification shall be submitted as set forth in Section D. 3. of this Appendix.

2. 24-Hour Reporting

The permittee shall report to the NDEQ, within 24 hours of becoming aware of:

- a. any noncompliance which may endanger the environment or human health or welfare,
- b. any unanticipated bypass as set forth in NDEQ Titles 119 and/or 127,
- c. all upsets as set forth in NDEQ Titles 119 and/or 127,
- d. any discharge to a POTW that causes a violation of the prohibited discharge standards set forth in NDEQ Title 127, Chapter 3, or
- e. any noncompliance of an effluent limitation in this permit.

Initial notification may be verbal. A written noncompliance notification shall be submitted as set forth in Section D. 3. of this permit.

If sampling performed by an industrial user (NPP permittee) indicates a permit effluent violation, the permittee shall notify the Department and the city within 24 hours of becoming aware of the violation. The permittee shall resample and have it analyzed. The results of the resampling analysis shall be submitted to the Department and the city within 30 days after becoming aware of the violation.

Appendix A (continued)

3. Written Noncompliance Notification

- a. The permittee shall submit a written noncompliance report to the NDEQ:
- (1) within five days of becoming aware of any noncompliance with the:
 - (a) NPP effluent limitations or requirements set forth in this permit, or
 - (b) NPDES toxic pollutant effluent limitations or requirements set forth in this permit.
 - (2) within seven days of becoming aware of any other noncompliance with the NPDES requirements and/or effluent limitations set forth in this permit.
- b. the written notification shall be submitted on a noncompliance form supplied by the Department and shall include:
- (1) a description of the discharge and cause of noncompliance,
 - (2) the period of noncompliance, including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and
 - (3) the steps taken to reduce, eliminate and prevent the reoccurrence of the noncompliance.

The submittal of a written noncompliance report does not relieve the permittee of any liability from enforcement proceedings that may result from the violation of permit or regulatory requirements.

4. Quarterly Discharge Monitoring Reports (DMRs)

The permittee shall report the monitoring results required by this permit on a DMR form supplied or approved by the Department. Monitoring results shall be submitted on a quarterly basis using the reporting schedule set forth below, unless otherwise specified in this permit or by the Department.

<u>Monitoring Quarters</u>	<u>DMR Reporting Deadlines</u>
January - March	April 28
April - June	July 28
July - September	October 28
October - December	January 28

If the permittee monitors any pollutant more frequently than required by this permit, using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR. The frequency of the analysis shall also be reported on the DMR.

5. Changes in Discharge

Any facility expansion, production increases or process modifications which will result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants must be reported by the permittee 180 days prior to the expansion, increases or modifications, either by amending his original application or by submitting a new application. This permit may be modified or revoked and reissued as a result of this notification to maintain compliance with applicable state or federal regulations.

Appendix A (continued)

6. Changes in Toxic Discharges from Manufacturing, Commercial, Mining and Silvicultural Facilities

Permittees discharging from manufacturing, commercial, mining and silvicultural facilities shall report to the Department:

a. if any toxic pollutant not limited in this permit is discharged from any NPDES outfall as a result of any activity that will or has occurred and results in its routine or frequent discharge. The Department shall be informed if that discharge exceeds the following notification levels:

- (1) 100 micrograms per liter (0.1 mg/l) for any toxic pollutant,
- (2) 200 micrograms per liter for acrolein and acrylonitrile (0.2 mg/l),
- (3) 500 micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol (0.5 mg/l),
- (4) 1000 micrograms per liter for antimony (1 mg/l),
- (5) five times the maximum concentration value reported for that pollutant in the permit application or
- (6) an alternative level established by the Director, and

b. if any toxic pollutant not limited in this permit is discharged from an NPDES outfall as a result of any activity that will or has occurred and results in its nonroutine discharge. The Department shall be informed if that discharge exceeds the following notification levels:

- (1) 500 micrograms per liter (0.5 mg/l) for any toxic pollutant,
- (2) 1000 micrograms for antimony (1 mg/l),
- (3) ten times the maximum concentration value reported for that pollutant in the permit application, or
- (4) an alternative level established by the Director.

7. Changes in Sludge Quality

The permittee shall provide written notice to the Department of any alteration or addition that results in a significant change in the permittee's sludge use or disposal practices. This permit may be modified or revoked and reissued as a result of this notification to maintain compliance with applicable state or federal regulations.

8. Changes of Loadings to Publicly Owned Treatment Work (POTW)

POTW's shall notify the Department of the following:

- a. any new introduction of pollutants from dischargers subject to the categorical pretreatment discharge limitations set forth in NDEQ Title 121, Chapter 2, and
- b. any substantial change in the volume or character of pollutants being introduced into the POTW.

Notification shall be made 180 days in advance whenever possible. Information on the quantity and quality of new discharges and their anticipated impact on the POTW shall be included.

Appendix A (continued)

9. Transfers

The permittee shall notify the Department at least 30 days prior to the proposed transfer of ownership of this permit or the permitted facility to another party as set forth in NDEQ Title 119, Chapter 12 and/or NDEQ Title 127, Chapter 14. The Department may modify or revoke and reissue this permit according to the regulations set forth in NDEQ Titles 119 and/or 127.

10. Compliance Schedules

The permittee shall submit a written report of compliance or noncompliance with any compliance schedule established in this permit. The written report shall be submitted within 14 days following all deadlines established in the compliance schedule. If compliance has not been achieved, the report shall include an alternative completion date, an explanation of the cause of the noncompliance and an explanation of the steps being taken to ensure future compliance. The submission of this report does not ensure the Department's acceptance of alternative compliance dates nor does it preclude the Department from initiating enforcement proceedings based upon the reported noncompliances.

E. Operation and Maintenance

1. Proper Operation and Maintenance

The permittee shall, at all times, maintain in good working order and operate as efficiently as possible, any facilities or systems of control installed by the permittee in order to achieve compliance with the terms and conditions of this permit. This would include, but not be limited to, effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate laboratory and process controls, and adequate funding which reflects proper user fee schedules.

2. Treatment System Failure and Upset

An upset is an affirmative defense to an enforcement action brought for noncompliance with technology-based permit effluent limitations if the permittee can demonstrate, through properly signed, operating logs or other relevant evidence, that:

- a. an upset occurred and the specific cause was identified,
- b. that the facility was properly operated and maintained at such time,
- c. the Department was notified within 24 hours of the permittee becoming aware of the upset, and
- d. the permittee took action to reduce, eliminate and prevent a reoccurrence of upset, including minimizing adverse impact to waters of the State.

3. Bypassing

Any diversion from or bypass of the treatment facilities is prohibited, unless:

- a. it is unavoidable to prevent loss of life, personal injury or severe property damage,
- b. no feasible alternative exists, i.e., auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime,

Appendix A (continued)

- c. the permittee submits notice to the Department within 24 hours of becoming aware of the bypass or if the bypass is anticipated or should have been anticipated, the Department is notified at least ten days prior to the bypass, and
- d. the bypass is conducted under conditions determined to be necessary by the Director to minimize any adverse effects.

If the bypass is needed for regular preventative maintenance for which back-up equipment should be provided, the bypass will not be allowed. When a bypass occurs, the burden is on the permittee to demonstrate compliance with items "a" through "d" above.

Additionally, NPP permittees shall report any bypasses to the POTW. Unanticipated bypasses shall be reported immediately and anticipated bypasses shall be reported at least ten days in advance.

All NPDES permittees shall notify the general public that a bypass of the treatment system is occurring. The public notification shall include:

- a. location of the bypass,
- b. the date the bypass started,
- c. anticipated length of time the bypass will occur, and
- d. an estimate of the total volume of wastewater bypassed.

4. Removed Substances

Solids, sludge, filter backwash or other pollutants removed in the course of treatment or control of wastewater shall be disposed of at a site and in a manner approved by the Nebraska Department of Environmental Quality. The disposal of nonhazardous industrial sludges shall conform to the standards established in or to the regulations established pursuant to 40 CFR, Part 257. The disposal of sludge shall conform to the standards established in or to the regulations established pursuant to 40 CFR, Part 503. If solids are disposed of in a licensed sanitary landfill, the disposal of solids shall conform to the standards established in Title 132. Publicly owned treatment works shall dispose of sewage sludge in a manner that protects public health and the environment from any adverse effects which may occur from toxic pollutants as defined in Section 307 of the Clean Water Act. This permit may be modified or revoked and reissued to incorporate regulatory limitations established pursuant to 40 CFR, Part 503.

F. Definitions

Administrator: The Administrator of the USEPA.

Aliquot: An individual sample having a minimum volume of 100 milliliters that is collected either manually or in an automatic sampling device.

Biweekly: Once every other week.

Bimonthly: Once every other month.

Bypass: The intentional diversion of wastes from any portion of a treatment facility.

Daily Average: An effluent limitation that cannot be exceeded and is calculated by averaging the monitoring results for any given pollutant parameter obtained during a 24-hour day.

Appendix A (continued)

Department: Nebraska Department of Environmental Quality.

Director: The Director of the Nebraska Department of Environmental Quality.

Industrial User: A source of indirect discharge (a pretreatment facility).

Monthly Average: An effluent limitation that cannot be exceeded, calculated by averaging the monitoring results for any given pollutant parameter obtained during a calendar month.

Publicly Owned Treatment Works (POTW): A treatment works as defined by Section 212 of the Clean Water Act (Public Law 100-4) which is owned by the state or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

30-Day Average: An effluent limitation that cannot be exceeded, calculated by averaging the monitoring results for any given pollutant parameter obtained during a calendar month.

Total Toxic Organics (TTO): The summation of all quantifiable values greater than 0.01 milligrams per liter (mg/l) for toxic organic compounds that may be identified elsewhere in this permit. (If this term has application in this permit, the list of toxic organic compounds will be identified; typically in the Limitations and Monitoring Section(s) or in an additional Appendix to this permit.)

Toxic Pollutant: Those pollutants or combination of pollutants, including disease causing agents, after discharge and upon exposure, ingestion, inhalation or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunction (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Upset: An exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee, excluding such factors as operational error, improperly designed or inadequate treatment facilities or improper operation and maintenance or lack thereof.

Volatile Organic Compounds (VOC): The summation of all quantifiable values greater than 0.01 milligrams per liter (mg/l) for volatile, toxic organic compounds that may be identified elsewhere in this permit. (See the definition for Total Toxic Organics above. In many instances, VOCs are defined as the volatile fraction of the TTO parameter. If the term "VOC" has application in this permit, the list of toxic organic compounds will be identified; typically in the Limitations and Monitoring Section(s) or in an additional Appendix to this permit.)

Weekly Average: An effluent limitation that cannot be exceeded, calculated by averaging the monitoring results for any given pollutant parameter obtained during a fixed calendar week. The permittee may start their week on any weekday but the weekday must remain fixed unless a change is approved by the Department.

"X" Day Average: An effluent limitation defined as the maximum allowable "X" day average of consecutive monitoring results during any monitoring period where "X" is a number in the range of one to seven days.

G. Abbreviations

CFR: Code of Federal Regulations

kg/Day: Kilograms per Day

Appendix A (continued)

MGD: Million Gallons per Day

mg/L: Milligrams per Liter

NDEQ: Nebraska Department of Environmental Quality

NDEQ Title 115: Rules of Practice and Procedure

NDEQ Title 117: Nebraska Surface Water Quality Standards

NDEQ Title 118: Ground Water Quality Standards and Use Classification

NDEQ Title 119: Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System

NDEQ Title 121: Effluent Guidelines and Standards

NDEQ Title 126: Rules and Regulations Pertaining to the Management of Wastes

NDEQ Title 127: Rules and Regulations Governing the Nebraska Pretreatment Program

NDEQ Title 132: Rules and Regulations Pertaining to Solid Waste Management

NPDES: National Pollutant Discharge Elimination System

NPP: Nebraska Pretreatment Program

POTW: Publicly Owned Treatment Works

ug/L: Micrograms per Liter

WWTF: Wastewater Treatment Facility

APPENDIX B - State Resource Waters and Public Drinking Water Supply Stream Segments

This appendix identifies stream segments and water bodies for which a written authorization is required to allow the discharge of storm water under the terms and conditions of NPDES General Permit NER10000 (See Section C.4 and C.7 of the permit). This appendix references these stream segments by County to facilitate the completion of the Notice of Intent and Relocation Notice forms. In filling out these forms, the applicant need only identify the stream segment or water body by name; the other information supplied is not needed on the forms.

Boyd County

Missouri River from the South Dakota border to the Knox County line; Class A State Resource Water; (Stream segment: NI1-10000)

Niobrara River from the Keya Paha County line to the Knox County line;
Class A State Resource Water; (Stream segments: NI2-10000 & NI3-10000)

Brown County

Calamus River from its headwaters to the Rock County line; Class B State Resource Water; (Stream segments: LO2-11300, LO2-11400, LO2-11500 & LO2-11600)

Niobrara River from the Cherry County line to the Rock County line;
Class A State Resource Water; (Stream segments: NI3-10000 & NI3-20000)

Long Pine Creek from its headwaters to the confluence of Bone Creek; Class B State Resource Water; (Stream segments: NI3-12300 and NI3-12400)

Cedar County

Missouri River from the Knox County line to the Dixon County line; Class A State Resource Water; Public Drinking Water; Threatened species: Lake & Pallid Sturgeon; (Stream segment: MT2-10000)

Cherry County

Niobrara River from the confluence of the Snake River to the Keya Paha/Brown County lines; Class A State Resource Water; (Stream segments: NI3-20000)

Dakota County

Missouri River from the Dixon County line to the confluence of the Big Sioux River; Class A State Resource Water; Public Drinking Water; Threatened species: Lake & Pallid Sturgeon; (Stream segment: MT2-10000)

Dawes County

Chadron Creek from its headwaters to its confluence with the White River; Public Drinking Water Standards; (Stream Segment: WH1-11300)

Cunningham Creek from its headwaters to its confluence with Indian Creek; Class A State Resource Water; (Stream segment: WH1-11710)

Dead Man's Creek from its headwaters to the Sioux County line; Public Drinking Water Standards; (Stream Segment: WH1-30100)

Soldier Creek from the Sioux County line to its confluence with the White River; Class A State Resource Water; (Stream segment: WH1-20300)

Appendix B (continued)

Dawes County (continued)

Squaw Creek from its headwaters to the National Forest Boundary; Class A State Resource Water; (Stream segment WH1-20120)

White River from the Sioux County line to its confluence with Soldier Creek; Class B State Resource Water; Public Drinking Water; (Stream segment: WH1-30000)

White River from Soldier Creek to the South Dakota border; Public Drinking Water standards; (Stream segments: WH1-10000 and WH1-20000)

Dixon County

Missouri River from the Cedar County line to the Dakota County line; Class A State Resource Water; Threatened species: Lake & Pallid Sturgeon; (Stream segment: MT2-10000)

Garfield County

Calamus River from the Loup County line to the confluence with North Loup River; Class B State Resource Water; (Stream segment: LO2-11300)

Holt County

Eikhom River from the confluence of the North and South Forks to Holt Creek; Class B State Resource Water; (Stream segment: EL4-40000)

Niobrara River from the Rock County line to the Knox County line; Class A State Resource Water; (Stream segment: NI2-10000)

Keith County

North Platte River from Kingsley Dam to the confluence of Whitetail Creek; Class B State Resource Water; (Stream segment: NP1-40000)

Otter Creek from its headwaters to Lake C.W. McConaughy; Class B State Resource Water; (Stream segment: NP2-10300)

Keya Paha County

Niobrara River from the Cherry County line to the Boyd County line; Class A State Resource Water; (Stream segments: NI3-10000 & NI3-20000)

Knox County

Missouri River from the confluence of the Niobrara River to the Cedar County line; Class A State Resource Water; Public Drinking Water; Threatened species: Lake & Pallid Sturgeon; (Stream segment: MT2-10000)

Missouri River from the Boyd County line to the confluence of the Niobrara River; Class A State Resource Water; (Stream segment: NI1-10000)

Niobrara River from the Boyd/Holt County line to its confluence with the Missouri River; Class A State Resource Water; (Stream segment: NI2-10000)

Appendix B (continued)

Knox County (continued)

Verdigre Creek from the confluence of the North Branch Verdigre Creek to its confluence with the Niobrara River; Class A State Resource Water; (Stream segment: NI3-10100)

Loup County

Calamus River from the Rock County line to the Garfield County line; Class B State Resource Water; (Stream Segment: LO2-11300)

Richardson County

Unnamed creek which discharges to the Missouri River in Section 5, Range 3 North, Township 17 East and flows through Indian Cave State Park (Only the upper reaches of this creek extend beyond the boundaries of Indian Cave State Park.), Class A State Resource Water; (Stream segment: NE1-10700).

Rock County

Calamus River from the Brown County line to the Loup County line; Class B State Resource Water; (Stream Segment: LO2-11300)

Long Pine Creek; Class B State Resource Water; (Stream segments: NI3-12300 and NI3-12400 - These segments are in Brown County but their is drainage from Rock County into them.)

Niobrara River from the Brown County line to the Holt County line; Class A State Resource Water; (Stream segments: NI3-10000)

Sioux County

Dead Man's Creek from the Dawes County line to its confluence with the White River; Public Drinking Water Standards; (Stream Segment: WH1-30100)

Middle Fork Soldier Creek from its headwaters to its confluence with Soldier Creek; Class A State Resource Water; (Stream segment: WH1-20310)

Soldier Creek from its headwaters to the Dawes County line; Class A State Resource Water; (Stream segments: WH1-20300 & WH1-20400)

White River from its headwaters to the Dawes County line; Class B State Resource Water; Public Drinking Water standard; (Stream segments: WH1-30000 & WH1-40000)

APPENDIX C - Information and Signatures Required in NOIs

As a minimum, Notices of Intent (NOIs) shall contain the following information to be considered complete. NPDES Form CSW-NOI, which is an attachment to this permit, meets these requirements.

- A. A descriptive name and the physical location of the construction site shall be provided. The physical location shall be expressed both in descriptive terms (i.e., street address, or if not available, in relationship to recognizable landmarks), and in a legal description designated in terms of section, township, range and county. The legal description shall be provided to the nearest 1/16th of a section, where possible (e.g., NW¼, SW¼, S10, T15N, R11E, Douglas County). For right-of-way projects that extend over several sections, a legal description is not required provided the site map (See Section F below) adequately identifies the location of the project.
- B. A declaration as to whether the site had been authorized to discharge under the previous construction storm water general permit (See Section B.5) or is presently covered by any other NPDES permit.
- C. The identity of the site owner, the developer and/or the contractor to which the discharge authorization will be issued. The party or parties specified should be those responsible for maintaining compliance with the terms and conditions of the permit.
- D. Identity of the Cognizant Official

The identity, mailing address and telephone number of the "cognizant official" the site owner, the developer, and/or the contractor shall be provided. If the "cognizant official" for more than one party (e.g., site owner, developer and contractor) sign the NOI, the discharge authorization shall be issued jointly to them. See examples below.

The qualifications and responsibilities for the "cognizant official" are set forth below and in NDEQ Title 119 Chapter 10.001:

All permit applications submitted to the Department shall be signed:

- 001.01 In the case of corporation, by a principal executive officer of at least the level of vice-president;
- 001.02 In the case of a partnership, by a general partner;
- 001.03 In the case of a sole partnership, by a general partner; and
- 001.04 In the case of a municipal, State or other public facility by either a principal executive officer or ranking elected official."

Example 1: The cognizant official for the developer signs the NOI. The developer assumes full responsibility for developing the SWPPP and for ensuring the contractors working on the site implement the SWPPP.

Example 2: The cognizant officials for the site owner and the primary contractor both sign the NOI. The owner and the contractor are both responsible for developing the SWPPP and for ensuring it is implemented.

Appendix C (continued)

Example 3: The cognizant officials for the site owner, the developer and the primary contractor all sign the NOI. All three are then responsible for developing the SWPPP and for ensuring it is implemented.

E. Identity of the Authorized Representative

The identity, mailing address and telephone number of the "authorized representative" shall be provided. The "authorized representative" is the primary contact for correspondence and monitor reporting, and must meet the requirements set forth in NDEQ Title 119 Chapter 10.002:

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director."

Only one authorized representative may be designated for any one construction site. The authorized representative may also sign NOIs, if the Cognizant Official has submitted an NOI previously and has specifically authorized the authorized representative to perform this task (See Appendix C Section K below).

F. One or more site maps are required as specified below.

1. On all projects, except those on linear right-of-way projects (e.g., pipelines, roads railways or cable right-of-ways), a map or maps showing the location of disturbed areas, storm water outfalls, erosion and sediment control structures, and any streams or wetlands on or adjacent to the project shall be provided.
2. On all projects of 20 acres or more, except those on linear right-of-way projects, a map or maps showing existing and post-construction contours shall be provided.
3. On linear right-of-way projects, a map or maps identifying the segments of the right-of-way involved in the proposed project and their location shall be provided.

G. The following information concerning the construction or development site is required.

1. A proposed schedule for the project identifying the construction phases and the implementation of pollution prevention activities (e.g., installation of erosion control structures and sedimentation basins, initial grading, temporary seeding, utility installation, final grading, paving, and permanent seeding) shall be provided.
2. A description of the pollution control and prevention practices to be used shall be provided.
3. The area of the overall site and the area that will be subject to clearing, grading or excavation shall be provided. On linear right-of-way projects, the applicant shall submit information on the approximate width and length of the areas disturbed rather than the area of the project(s).

Appendix C (continued)

4. The receiving stream(s) to which storm water will be discharged shall be identified. Any receiving streams identified in Appendix B shall be identified as such, thus acknowledging that written discharge authorization is required. On linear right-of-way projects where it is impractical to identify every receiving stream, it shall only be necessary to identify the receiving streams that are listed in Appendix B, provided the site map (See Section F above) adequately identifies the location of the project(s).
 5. Any information of which the applicant is aware concerning existing wastes or contamination present at the proposed construction site shall be provided.
 6. If waste or contamination is present, describe planned clean-up and/or disposal procedures shall be described.
 7. Any storm water discharges to any large or medium municipal storm water systems (More information is provided in permit Section C.3.c concerning requirements for these sources.) shall be identified.
- H. Other government agencies with jurisdiction relative to the construction site shall be identified. A brief explanation of the responsibilities and requirements of those programs shall be provided, as well as a status report on any application and permit requirements. Examples include the following:
- US Army Corps of Engineers - CWA §404 permit - application submitted
 - City grading permit - application submitted and permit received
 - Local NRD erosion control standards - SWPPP will meet requirements
- I. Information identifying whether the applicant has obtained authorization to discharge under this general permit before and whether the proposed construction project is a continuation of a previous project.

Appendix C (continued)

J. Certification

The following certification statement shall be contained in the NOI.

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

I further certify that:

1. I, or qualified members of my staff, have reviewed and understand the terms and conditions of NPDES General Permit Number NER100000;
2. the construction site(s) identified in Section 1 of this NOI meets the "Applicability" requirements and is not excluded by the "Limitation of Coverage" requirements, set forth in Section B of the permit; and
3. I understand that the submission of this NOI obligates the owner, developer and/or operator identified in this NOI to comply with the terms and conditions of the Permit NER100000, provided authorization to discharge is obtained.

K. Signature Requirements

The initial NOI submitted by any person, business, government agency, or other entity shall be signed by the Cognizant Official(s) representing them. Any NOIs submitted for additional sites may be submitted under the signature of the Authorized Representative, provided the Cognizant Official has specifically authorized them to perform this task in a previous NOI or other follow-up written documentation.

If the Cognizant Official for more than one party signs the NOI, then the discharge authorization shall be jointly issued to them. If more than one party is identified as an owner, developer or contractor in the NOI, but the Cognizant Official for only one party signs the NOI, the discharge authorization shall be issued to that party alone.

STATE OF NEBRASKA



DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director
Suite 400, The Atrium
1200 N Street
P.O. Box 93922
Lincoln, Nebraska 68509-3922
Phone (402) 471-2186

E. Benjamin Nelson
Governor

NPDES Form CSW-NOI

Notice of Intent (NOI) Requesting Discharge Authorization for Storm Water from Construction Sites Under the NPDES General Permit NER100000.

Submission of this NOI fulfills the requirements set forth in Sections C.1 and C.2 of NPDES General Permit Number NER100000. By submission of this NOI, the applicant is requesting authorization to discharge under the terms and conditions of said permit, and is agreeing to meet all of the terms and conditions set forth in said permit. The specific procedures used for granting authorization to discharge are set forth in Section C.4 of the permit. Appendix C in the permit also contains information that may provide some assistance in the completion of this NOI.

The applicant is responsible for ensuring they meet the "Applicability" requirements set forth in Section B of the permit. Once authorization to discharge is granted, the permittee is required to maintain compliance with the terms and conditions of the permit. Any questions concerning this NOI, the permit, its applicability, its terms or conditions, or any other related subjects, should be directed to the Permits and Compliance Section at (402) 471-4239. Written requests and application submittals should be sent to the Permits and Compliance Section at the address set forth on page 6 of this form.

Attachments may be used to complete or supplement this NOI provided they are identified and referenced on this form.

1) Identification of Construction Project

Name of Project: _____

Location of Project (Street address or brief narrative description): _____

Legal Description ⁽¹⁾: _____ Quarter of the _____ Quarter, or _____

Section _____, Township _____ N, Range _____ (EorW), _____ County

(1) Applicants may enter a legal description in terms other than those requested. For example: N $\frac{1}{2}$, Section 8, Township 8 N, Range 6 W.

2) Site Map(s) - Provide one or more site maps as directed below:

For all projects, except those on linear right-of-way projects (e.g., pipelines, roads, railways or cable right-of-ways), provide a map or maps showing the location of disturbed areas, storm water outfalls, erosion and sediment control structures, and any streams or wetlands on or adjacent to the project.

For projects of 20 acres or more, except those on linear right-of-way projects, provide a map or maps showing existing and post-construction contours.

For linear right-of-way projects, provide a map or maps identifying the segments of the right-of-way involved in the proposed project and their location(s).

3) Information on the Construction Project (Continued)

Total Area of the Site: _____ acres Area of the Site that will be Disturbed: _____ acres

or for linear right-of-way projects length and width approximations may be provided: _____

Briefly describe the project: _____

Provide (or attach) a tentative schedule for the construction project including the installation or implementation of major erosion prevention and control measures (e.g., initial installation of controls, temporary and permanent seeding, etc.).

Provide any information of which the applicant is aware, concerning any existing wastes or contamination that may exist at the proposed construction site, or that may be present in fill material to be used at the site. If waste or contamination is present, describe any planned clean-up and/or disposal procedures. If the applicant is not aware of any existing contamination or wastes at the site or in fill, write "NONE" below.

4) Receiving Stream: .

Identify the receiving stream or streams to which storm water from this project will be discharged (for linear right-of-way projects it may only be necessary to identify receiving streams that are listed in Appendix B):

Is the receiving stream listed in Appendix B of the permit? _____

If yes, written discharge authorization will be required prior to the start of the project (See permit Section C.4.e).

5) Owner , Developer and/or Operator Responsible for Permit Compliance

This section is used to identify the owner, the developer and /or the contractor for which the discharge authorization is requested (i.e., the applicant(s)). If only one owner, developer or contractor is to be responsible for permit compliance, then only applicant need be identified. If two or more owners, developers or contractors are to share responsibility for permit compliance, then they must all be identified.

A "cognizant official" must be identified for each applicant. The "cognizant official" is responsible for signing all permit applications and meets the requirements set forth in NDEQ Title 119 Chapter 10.001:

"All permit applications submitted to the Department shall be signed:

001.01 In the case of corporation, by a principal executive officer of at least the level of vice-president;

001.02 In the case of a partnership, by a general partner;

001.03 In the case of a sole partnership, by a general partner; and

001.04 In the case of a municipal, State or other public facility by either a principal executive officer or ranking elected official."

Name of Applicant #1: _____

Check Appropriate Role(s): Land Owner _____ Leasee _____ Developer _____ Contractor _____ Other _____

If "Other" specify: _____ Tel. _____

Cognizant Official: _____ Title: _____

Mail Address: _____

City: _____ State: _____ Zip: _____

Name of Applicant #2: _____

Check Appropriate Role(s): Land Owner _____ Leasee _____ Developer _____ Contractor _____ Other _____

If "Other" specify: _____ Tel. _____

Cognizant Official: _____ Title: _____

Mail Address: _____

City: _____ State: _____ Zip: _____

Name of Applicant #3: _____

Check Appropriate Role(s): Land Owner _____ Leasee _____ Developer _____ Contractor _____ Other _____

If "Other" specify: _____ Tel. _____

Cognizant Official: _____ Title: _____

Mail Address: _____

City: _____ State: _____ Zip: _____

NPDES Form CSW-NOI

6) Facility Contact or Authorized Representative

The Applicant(s) set forth above may designate an individual to be the "Authorized Representative" for the project. The "authorized representative" is the primary facility contact for correspondence and monitor reporting, and may also be authorized to submit NOIs for future projects. The Authorized Representative must meet the requirements set forth in NDEQ Title 119 Chapter 10.002:

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director."

The Authorized Representative

Authorized Representative: _____ Title: _____

Employer: _____ Tel.: _____

Mail Address: _____

City: _____ State: _____ Zip: _____

Is the Authorized Representative authorized to submit future NOIs (Yes or No): _____

7) Previous Projects

Have the Applicant(s) applied for authorization to discharge storm water under this permit or any other permit previously? _____ If so, provide the following information on the most recent project:

NPDES Authorization Number: NER10 _____ Approximate Date: _____

Project Name & Location: _____

Is this project a continuation of any previous project? _____ If so provide the following for the previous project:

NPDES Authorization Number: NER10 _____ Approximate Date: _____

Project Name & Location: _____

8) Additional Information that may be Pertinent (Optional)

9) Other Discharge Requirements:

Is storm water from this site discharged within the city limits of Omaha or Lincoln? _____

If yes, the city will need to be notified. Has this been accomplished? _____

If yes, please provide City contact's name: _____

If not, explain or provide notice schedule: _____

Is storm water discharged to a storm water conveyance owned or maintained by any other local city, county

or drainage district? _____ If yes, please specify: _____

Have local government agencies been contacted concerning any local requirements? _____

Is this project in compliance with local stormwater regulations concerning water quality, erosion control and flow attenuation? If not, explain.

Has the US Army Corps of Engineers been contacted concerning CWA § 404 requirements? _____

Is the project subject to CWA § 404 requirements? _____

If yes, has a § 404 permit application been submitted? _____

Has a § 404 permit been issued? _____

If a § 404 permit is required, but has not yet been obtained please explain status: _____

Has the local NRD been contacted concerning this project? _____

Does the NRD have any regulations that relate to this project? If yes, please explain: _____

10) Certification

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

I further certify that:

- 1) I, or qualified members of my staff, have reviewed and understand the terms and conditions of NPDES General Permit Number NER100000;
2. the construction site(s) identified in Section I of this NOI meets the "Applicability" requirements and is not excluded by the "Limitation of Coverage" requirements, set forth in Section B of the permit; and
3. I understand that the submission of this NOI obligates the owner, developer and/or operator identified in this NOI to comply with the terms and conditions of the Permit NER100000, provided authorization to discharge is obtained.

Signature of Cognizant Official #1 or Authorized Representative **

Date

Name and Title of Cognizant Official #1 or Authorized Representative

** If two or more applicants were identified on page two of the application, the cognizant officials for each must sign this form, unless an Authorized Representative was previously designated by the same group of applicants.

** If this form is signed by an Authorized Representative, specify when and how was this authorized?
(e.g., letter of 8/1/97 for Prairie Estates in Kearney or NOI submitted on 8/2/97 for NER10002)

Signature of Cognizant Official #2

Date

Name and Title of Cognizant Official #2

Signature of Cognizant Official #3

Date

Name and Title of Cognizant Official #3

Submit the completed NOI to:

Mail Address:

Permits and Compliance Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

Location Address:

Permits and Compliance Section
Nebraska Department of Environmental Quality
1200 'N' Street, The Atrium, Suite 400
Lincoln, NE 68509

STATE OF NEBRASKA



E. Benjamin Nelson
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

NPDES Form SW-SEMR - Storm Event Monitoring Report

Reporting is required for all storm event monitoring activities in which quantitative analyses for storm water pollutants is conducted. Monitoring results are to be submitted to the Department within 30 days following the monitoring event, unless a Department approved extension is provided. Certain parts of this form may not apply to all monitoring events. If the information requested is not available, please write-in: "Not Available". Attachments may be used to supplement this form provided they are referenced or identified in this form.

1) Facility Identification:

NPDES Permit Identification Number: _____

Facility Name: _____

Facility Location: _____

2) Precipitation Event Information:

Duration (Hrs): _____ Magnitude (Inches): _____

Start of Precipitation Event (Date/Time) _____

End of Precipitation Event (Date/Time) _____

Time Elapsed Between Event Sampled and Previous Precipitation Event _____

3) Monitoring Information: Supply the following information for each outfall monitored.

Outfall Designation (#) _____

Monitoring Started (Date/Time) _____

Monitoring Ended (Date/Time) _____

Discharge Volume (Gallons) * _____

* The volume of storm water discharged may be measured or calculated; see permit Section F.3.b.

Provide or attach a brief explanation of the sampling procedures used (i.e., grab, time composite, or flow proportioned composite), and list the pollutants monitored at each outfall. Provide pollutant specific and outfall specific information when necessary. See permit Section F.2 for sampling procedure requirements.

4) **Monitoring Results:** Provide or attach all discharge monitoring event test results, and identify the laboratory(s) and test methods used. All attached pages must be identified by page numbers or other identifying designations. Examples: ABC Lab report No. 010198-0765 (3 pages); or See attached pages designated A1 thru A6.

5) **Other Information:** Provide or attach any other information pertinent to this monitoring report.

6) **Certification and Signature**

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations. See 18 U.S.C. § 1001 and 33 U.S.C. § 1319, and Neb. Rev. Stat. §§ 81-1508 thru 81-1508.02.

Signature of Authorized Representative or Cognizant Official **	Date
Printed Name	Title

** The qualifications and responsibilities of the "cognizant official" are set forth below and in NDEQ Title 119 Chapter 10.001:

- All permit applications submitted to the Department shall be signed:
- 001.01 In the case of corporation, by a principal executive officer of at least the level of vice-president;
- 001.02 In the case of a partnership, by a general partner;
- 001.03 In the case of a sole partnership, by a general partner; and
- 001.04 In the case of a municipal, State or other public facility by either a principal executive officer or ranking elected official."

** The qualifications and responsibilities for the "authorized representative" are set forth in NDEQ Title 119 Chapter 10.002:

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director."

Submit the completed NOI to:

Mail Address:
 Permits and Compliance Section
 Nebraska Department of Environmental Quality
 PO Box 98922
 Lincoln, NE 68509-8922

Location Address:
 Permits and Compliance Section
 Nebraska Department of Environmental Quality
 1200 'N' Street, The Atrium, Suite 400
 Lincoln, NE 68509

STATE OF NEBRASKA



DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director
Suite 400, The Atrium
1200 'N' Street
PO Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

E. Benjamin Nelson
Governor

NPDES Form CSW-START - Notice of Start-up of Construction Activity

This form may be used to notify the Department that construction activity has been started at a site having coverage under the NPDES general permit for storm water discharges from construction sites, NER100000. Submittal of this form fulfills the requirements of Section C.7.a of the permit.

This form is not the Notice of Intent or NOI form which is used to request discharge authorization. An NOI must be submitted prior to or concurrent with this form to obtain discharge authorization.

NPDES Permit Identification Number: NER 1 0 _____

Facility Name: _____

Facility Location: _____

Date Construction Activities were or will be Commenced: _____

Signature of Authorized Representative or Cognizant Official ** _____ Date _____

Printed Name _____ Title _____

** The qualifications and responsibilities of the "cognizant official" are set forth below and in NDEQ Title 119 Chapter 10.001:

All permit applications submitted to the Department shall be signed:

001.01 In the case of corporation, by a principal executive officer of at least the level of vice-president;

001.02 In the case of a partnership, by a general partner,

001.03 In the case of a sole partnership, by a general partner; and

001.04 In the case of a municipal, State or other public facility by either a principal executive officer or ranking elected official."

** The qualifications and responsibilities for the "authorized representative" are set forth in NDEQ Title 119 Chapter 10.002:

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director."

Submit the completed form to:

Mail Address:
Permits and Compliance Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

Location Address:
Permits and Compliance Section
Nebraska Department of Environmental Quality
1200 'N' Street, The Atrium, Suite 400
Lincoln, NE 68509

STATE OF NEBRASKA



DEPARTMENT OF ENVIRONMENTAL QUALITY
Randolph Wood
Director
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186

E. Benjamin Nelson
Governor

NPDES Form CSW-END - Notice of Completion of Construction Activity

This form may be used to fulfill the requirements of Section C.7.b of the NPDES general permit for storm water discharges from construction sites, NER100000. This notice should be submitted when 95% of a permitted construction site has been stabilized with perennial vegetation or other permanent cover. Coverage under the permit is typically terminated 180 days after 95% of the site is stabilized (See permit Section B.4.a).

NPDES Permit Identification Number: NER 1 0 _____

Facility Name: _____

Facility Location: _____

Date when 95% of the area of the site was stabilized: _____

Proposed date for ending permit coverage: ****** _____

**** Must be at least 180 days after the date when 95% of the site was stabilized.**

Signature of Authorized Representative or Cognizant Official **	Date
_____	_____
Printed Name	Title

**** The qualifications and responsibilities of the "cognizant official" are set forth below and in NDEQ Title 119 Chapter 10.001:**

All permit applications submitted to the Department shall be signed:

001.01 In the case of corporation, by a principal executive officer of at least the level of vice-president;

001.02 In the case of a partnership, by a general partner;

001.03 In the case of a sole partnership, by a general partner; and

001.04 In the case of a municipal, State or other public facility by either a principal executive officer or ranking elected official."

**** The qualifications and responsibilities for the "authorized representative" are set forth in NDEQ Title 119 Chapter 10.002:**

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director."

Submit the completed form to:

Mail Address:

Permits and Compliance Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

Location Address:

Permits and Compliance Section
Nebraska Department of Environmental Quality
1200 'N' Street, The Atrium, Suite 400
Lincoln, NE 68509

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DIVISION 02 - SITE WORK

SECTION 02000

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May 2001

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SECTION 02000

STONE (QUARRIED AND SALVAGED)

May 2001

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)

AASHTO T 103 (1991) Soundness of Aggregates by Freezing and Thawing

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM C 88 (1990) Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate

ASTM C 127 (1988) Specific Gravity and Absorption of Coarse Aggregate

1.2 SUBMITTALS

Government approval is required for submittals with a "G-RE" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Data

Location of Material Sources for Stone; G-RE.

Letter of Clearance; G-RE.

SD-09 Reports

Tests, service records, and results; G-RE.

SD-14 Samples

Samples of Stone; G-RE.

1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

1.4 PAYMENT

Separate payment will not be made for the work described in this section.

All costs for this work will be included in the appropriate contract unit bid prices.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 QUARRIED STONE

3.1.1 Source

The Contractor shall submit the location of material sources for quarried stone in accordance with SECTION 01200 CONSTRUCTION GENERAL. The locations shall be described to the quarter-quarter section and shall be clearly delineated on a map with a scale of 1 inch = 2000 feet. The map shall also indicate roads and distances to the nearest cities or towns, which would appear on typical highway maps. The Contractor shall also submit a letter of clearance from the State Historic Preservation Officer permitting the quarrying, excavation, or other removal of the required contract materials. Address of the State Officer is as follows:

NEBRASKA

DR. JAMES A. HANSEN
NEBRASKA STATE HISTORICAL SOCIETY
1500 R. STREET, P.O. BOX 82554
LINCOLN, NE 68503

IOWA

DAVID CROSSUN, SHPO
IOWA STATE HISTORICAL SOCIETY
EAST 12th AND GRAND AVENUE
DES MOINES, IA 50319

SOUTH DAKOTA

DR. JUNIUS B. FISHBURNE
OFFICE OF CULTURAL PRESERVATION
KNEIP BUILDING
PIERRE, SD 57501

3.1.2 General Quality

Whenever "stone" is specified in this contract, it shall be durable stone approved by the Contracting Officer's Representative (COR) and shall conform to all requirements of these specifications. The Contractor shall submit samples of stone the location of the sources of materials in accordance with paragraph 3.1. and paragraph 3.4. Stone salvaged from any existing federally constructed erosion control or navigation project will not be approved as a source of material except where specified on the drawings. In addition to the sampling and test results or service test records required of the Contractor, the COR reserves the right to inspect the material source and require additional samples of stone material, as selected by the COR. These samples would then be submitted to the COR for evaluation and approval prior to delivery of any material to the site of the work, except for test purposes. The samples shall be identified by specific location and specific geologic formation, and shall be obtained by the Contractor and delivered at his expense to a point designated by the COR at least 10 days in advance of the time when the placing of the stone protection is expected to begin. The above inspection and sampling may be repeated any time the Contractor changes the location of geological formation from which the material is coming. The Contractor shall not be granted an extension of time or extra compensation due to any delay caused by sampling, testing, approval or disapproval of stone material under the requirements of these specifications.

3.1.3 Dimensions

Stone for the intake structures shall consist of broken field boulders or quarried stone meeting the quality requirements above. Neither the breadth nor the thickness of any piece of stone shall be less than one-quarter of its length. Stone shall be reasonably well graded from coarse to fine. Quarry operation shall be controlled to produce a reasonable well graded stone of the required size, and the Contracting Officer may require changes as necessary to produce the required product. Dirt and fines of less than 1/2-inch maximum cross section, accumulated from interledge layers or from blasting or handling operations or breaking shall not exceed 5 percent by weight.

The stone shall be reasonably well graded between the following limits:

Limits of Stone Weight Percent Lighter by Weight %	Weight in Pounds (lbs)		Size in Approx. Spherical Diameter (in)	
	Maximum	Minimum	Maximum	Minimum
100	691	276	24	17.7
50	292	138	18	14
15	146	43	14.3	9.5

3.1.4 Tests, Service Records, and Results

Tests, service records, and results will be used to determine the acceptability of the quarried stone protection materials. In the event test reports and a service record that are satisfactory to the Contracting Officer are not available, as in the case of newly operated sources, the material shall be subject to such tests as are necessary to determine its acceptability for use in the work. Acceptance testing of field boulders for compliance with the quality requirements specified hereinafter will not be required. Tests to which the material may be subjected include petrographic analysis, specific gravity, absorption, wetting and drying, soundness in magnesium sulfate, freezing and thawing, and such other tests as may be considered necessary to demonstrate to the satisfaction of the Contracting Officer that the materials are acceptable for use in the work.

All sampling of the stone protection materials will be made by or under the supervision of the COR. All tests shall be performed by the Contractor at no cost to the Government. The stone protection material shall meet the following test limits when tested as indicated.

3.1.4.1 Bulk Specific Gravity

Saturated Surface-dry basis, ASTM C 127 - not less than 2.40. The tests method shall be modified as follows: Total sample shall weigh 5,000 grams \pm 2 percent. Individual particles shall weigh approximately 300 grams each.

3.1.4.2 Soundness in Magnesium Sulfate

Soundness in Magnesium Sulfate, ASTM C 88, loss at 5 cycles not more than 12 percent. ASTM C 88 shall be modified as follows:

- a. Sample Preparation: The sample shall be prepared by breaking it into fragments reasonably uniform in size and shape and weighing approximately 100 grams each. The test sample shall weigh 5,000 grams \pm 2 percent. The sample shall be thoroughly washed and dried previous to test as described for coarse aggregate. The samples immersed in the solution shall be maintained at a temperature of 80 degrees F \pm 2 degrees F for the immersion period.

b. Quantitative Examination: At the end of the fifth cycle, the percentage loss shall be determined by the three following methods. The test report shall show the loss computed by each method; however, only the combined loss shall be used for acceptance or rejection of the material.

1. Loss by Breaking

An individual piece which has broken or split into three or more fragments shall be considered to have failed the test, provided each of the three such fragments is at least 10 percent of the original piece by weight. The total original weight of all pieces failing the test, expressed as percentage of the total original weight of the sample, shall be considered as percentage loss by breaking.

2. Loss by Crumbling and Flaking

After the loss by breaking has been determined, the pieces that have not failed in that determination shall be screened on the 1/2-inch sieve and the material retained on the sieve shall be weighed for purposes required to determine combined losses. The pieces which have failed by breaking shall then be added to the material remaining on the 1/2-inch sieve and screened. The difference between the total original weight of the sample and the total weight of the material retained on the 1/2-inch sieve expressed as percentage of the total original weight, shall be considered as percentage loss by crumbling and flaking.

3. Combined Loss

The difference between the total original weight of the material retained on the 1/2-inch sieve, after screening the pieces which did not fail by breaking, expressed as percentage of the total original weight, shall be considered as percentage combined loss.

4. Report

The report for riprap rock shall show the percentages of loss calculated as described herein before and the number of pieces affected, classified as to number disintegrating, splitting, crumbling, cracking, flaking, etc.

3.1.4.3 Soundness in Freezing and Thawing-Method

Soundness in Freezing and Thawing-Method for Riprap Rock, Modified AASHTO T 103, loss at 12 cycles - not more than 10 percent. The test for freezing and thawing AASHTO T 103, Ledge Rock Method, Procedure C, modified as follows:

a. The temperature of the surrounding medium shall be maintained in the range of -20 degrees to -10 degrees F.

b. Length of a freezing and thawing cycle shall be sufficient to totally freeze and totally thaw each piece of the sample during each cycle. The laboratory shall specifically determine for each sample that the cycle used is sufficient to accomplish total freezing and total thawing and shall report this in the test report. However, in no case shall the cycle consist of less than 2-1/2 hours of freezing followed by 1 hour of thawing. The sample shall be held in the frozen condition whenever necessary to break the cycle (over-night, weekends, etc.).

c. Procedure C, Partial Immersion shall be used except that soaking prior to testing shall be in accordance with Procedure A.

d. The test report shall describe the type of failure of the discrete particles.

3.1.4.4 Gradation Field Tests

Tests to determine the amount of dirt and fines of less than 1/2-inch maximum cross section and to determine the gradation of the quarried and new stone material shall be performed by the Contractor, under the supervision of the COR, by approved methods. A representative sample, consisting of between 4 and 8 tons, shall be tested at the start of construction operations and at intervals during construction, as directed. A total of three acceptable tests shall be required from each different source of stone material and for each specified gradation. These tests shall be performed at the construction site prior to placement of the stone. The test shall be conducted immediately upon request of the COR. The Contractor shall plot the results of each test for gradation in relation to the gradation limits envelope specified. The plots shall be made on Engineering Form 4055, furnished by the COR, or on a similar form. Results of the field test and the plots shall be furnished to the COR prior to placement of the stone. If at any time the material fails to meet the requirements, the Contractor shall adjust his operations to control the amount of dirt and fines to meet the specifications.

3.2 SALVAGED STONE

3.2.1 General

Stone shall be salvaged from existing dikes and revetments as shown on the contract drawings, and directed by the COR. Salvaged stone shall be used as foundation material in the inlet structures, as shown on the drawings. Most of salvaged rock will be used to construct secondary stabilization features (e.g., refusal, toe revetment, etc.), as called for in the drawings. Gradation is not critical on these structures, provided that more than half of the material produced in the salvage operation is identifiable as well-graded stone. The resulting mix of stone should be roughly equivalent the gradation specified for quarry stone, although it will be at the lower end of the gradation table (i.e., the larger stones probably will fall within the W50 range). If the salvaged material contains an excessive amount of fines, the Contractor would need to wash some of the fines out to make the material qualify for payment. The Contractor should request frequent observations by the COR to ensure that the secondary structures are using salvaged stone of adequate gradation. If the material locally available as salvaged stone proves to be insufficient to construct any of the secondary structures, the COR will instruct the Contractor which structures or portions of structures have a higher priority.

3.2.2 Quality

The COR will conduct a visual inspection of the salvaged stone to determine if the material is suitable for reuse. Unsuitable and excess material shall be placed in the over-excavated areas shown on the drawings, or placed in areas as directed by the COR. The most likely area to place excess stone is the north end of the disposal berm. Unsuitable and excess material would not qualify for payment, since its removal from existing structures is part of the dike lowering or other structure modification.

3.3 BROKEN CONCRETE

Broken concrete rubble will not be allowed as a substitute for stone.

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SECTION 02110

CLEARING AND GRUBBING

May 2001

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SECTION 02110

CLEARING AND GRUBBING
May 2001

PART 1 GENERAL

1.1 REFERENCES (NOT USED)

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittal

Disposal Facility; G-RE.

Written permission to dispose of such products on private property shall be filed with Contracting Officer (CO).

1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

1.4 PAYMENT

Separate payment will not be made for stripping operations described in this section. All costs for stripping work shall be included in the associated contract unit bid prices. Payment for clearing and grubbing will not be as a separate item, but will be included under the bid schedule item *All Remaining Work*.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 STRIPPING

Stripping shall consist of removal of all topsoil, vegetation and trees less than four inches in diameter, measured at a point 4 feet above the ground, necessary to perform the associated work. Stripping shall be performed within the limits required for construction.

Stripping will be confined to the limits of channel construction and inlet/outlet control structures. Roads shall be stripped within the limits of construction as shown on the contract drawings. The refuse shall be disposed of as specified in paragraph 3.4. All areas to be stripped shall be approved by the CO prior to commencement of clearing operations.

3.2 CLEARING

Clearing shall consist of complete removal of all obstructions above ground surface. Removal of trees greater than four inches in diameter, measured at a point 4 feet above the ground, are included in this item of work. All trees, except as specified in subparagraph 3.2.1, all stumps, down timber, snags, old piling, stone, abandoned structures, fencing, and similar debris shall be cleared within the limits required for construction.

Clearing will be confined to the limits of channel construction, dike lowering, and inlet/outlet control structures. Roads shall be cleared within the limits of construction as shown on the contract drawings. The refuse shall be disposed of as specified in paragraph 3.4. All areas to be cleared shall be approved by the CO prior to commencement of clearing operations.

Roadway clearing shall not exceed 12 feet wide. Road widths greater than 12 feet must be approved by the CO prior to commencement of clearing and stripping. The contractor will make maximum use of existing trail alignment and openings to minimize tree clearing. Trimming and removal of branches that overhang the roadway shall be kept to the minimum necessary for the height of equipment

Pile dikes located within areas to be excavated or dredged shall be removed to at least the design elevation.

3.2.1 Trees

Removal of any trees greater than 8 inches in diameter, measured at a point 4 feet above the ground, shall require the approval of the CO. Trees shall be felled in such a manner as to avoid damage to trees left standing, to existing structures and installations, and those under construction, as well as with due regard to the safety of employees and others. Removal of trees within 100 feet of the Missouri River shall be kept to an absolute minimum.

3.2.2 Vegetation

Vegetation to be removed shall consist of all heavy growth of crops, grass, and weeds, within the clearing limits of the channel and structures.

3.2.3 Disposal Areas

The disposal area shall be stripped and cleared to the extent required for placing of waste material.

3.3 GRUBBING

Grubbing shall consist of the removal of all stumps, roots, buried logs, old piling, and other objectionable matter. The areas within the limits of all structures shall be thoroughly grubbed. All tap roots, lateral roots, piling, or other projections over 1-1/2 inches in diameter shall be removed to a depth of 2 feet below the natural surface of the ground, or the base of the structures. Areas where erosion protection rock is to be placed shall be thoroughly grubbed. All areas to be grubbed shall be approved by the contracting officer prior to commencement of grubbing operations.

3.4 DISPOSAL OF MATERIALS

3.4.1 Disposal of Debris

Timber pilings must be disposed of at a State licensed landfill.

Disposal areas within the project right-of-way are designated on the contract drawings. All logs, stumps, brush, and vegetation which are the products of the clearing and grubbing operations may be placed in tightly compacted piles placed within treed areas, in open areas at least 12 feet above the pilot channel invert elevation, or within the designated disposal area and covered with at least two (2) feet of earth material compacted to the requirements of disposal areas as specified in SECTION 02210 GRADING. All trash and other miscellaneous debris will be disposed of off-site at the expense of the Contractor, and approved by the CO. Burning of trees, vegetation, or any other material is NOT allowed.

In lieu of placement in disposal areas, the Contractor, at his option, may remove any or all of the products of clearing and grubbing operations from the site and dispose of the material at other locations or through other sources arranged for, by, and at the expense of the Contractor, and approved by the CO. The disposal of material shall closely follow the clearing and grubbing process so that in the case of high water the cleared materials will not be washed downstream. In no case shall cleared and grubbed material be thrown or left in or on the banks of the channels. No material shall be disposed of in the Missouri River or pilot channel areas, nor in wetland areas on-site or off-site. If the contractor opts to dispose of material off-site, he shall comply with all Federal, state and local laws and regulations, and provide copies of all permits to the CO.

Debris will also be disposed of in accordance with Section 01430, Environmental protection.

3.4.2 Brush Piles

The Contractor may dispose of trees and branches in brush piles within the project area. Brush piles shall be no higher than 10 feet above the existing ground surface. Neither the length or the width of the brush piles shall exceed 40 feet. The location of each brush pile shall be approved by the CO prior to placement of material. Brush piles shall be placed in such a manner as to ensure that under no circumstances will piling end up in the Missouri River or pilot channel. No brush piles shall be placed in wetland areas on-site or off-site. Brush piles shall be constructed in tightly compacted piles and placed within treed areas, or shall be placed at least 12 feet above pilot channel invert elevation if in open areas.

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01/00

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SECTION 02210

GRADING
01/00

PART 1 GENERAL

The work covered by this section includes excavation for channels, excavation and backfill for control structures and roads. Dredging is an acceptable means of excavation with the requirements provided in specification section 02482, Dredging.

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 1556	(1990) Density and Unit Weight of Soil in Place by the Sand-Cone Method
ASTM D 698	(1991) Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/cu. ft. (600 kN-m/cu.m.))
ASTM D 2487	(1993) Classification of Soils for Engineering Purposes (Unified Soil Classification System)
ASTM D 2922	Standard Test Methods for Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth)

1.2 DEFINITIONS

1.2.1 Satisfactory Materials

Materials classified in ASTM D 2487 as SM, CL, CH, and ML and free from roots and other organic matter, trash, debris, and frozen materials and stones larger than 6 inches in any dimension are satisfactory.

Materials classified in ASTM D 2487 as SP, SC, GM, GW, GP, and SW are suitable for road fill areas only within the inner core of the fill, not within two feet of top of grade including on side slopes. These materials are suitable fill beneath the inlet and outlet structures.

1.2.2 Unsatisfactory Materials

Materials which do not comply with the requirements for satisfactory materials are unsatisfactory. Materials classified in ASTM D 2487 as MH, Pt, OH, and OL are unsatisfactory.

1.2.3 Cohesionless and Cohesive Materials

Cohesive materials include materials classified as GC, SC, ML, CL, MH, and CH. Cohesionless materials include materials classified in ASTM D 2487 as GW, GP, SW, and SP. Materials classified as GM and SM will be identified as cohesionless only when the fines have a plasticity index of zero.

1.2.4 Degree of Compaction

Degree of compaction is a percentage of the maximum density obtained by the test procedure presented in ASTM D 698 abbreviated below as a percent of laboratory maximum density.

1.2.5 Right-of-Way

The right-of-way for constructing the work and disposal areas will be furnished without cost to the Contractor, within the right-of-way as shown on the drawing. Other disposal areas outside the right-of-way may be selected by the Contractor subject to the approval of the Contracting Officer and at the cost of the Contractor.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-06 Test Reports

Field Testing Control; FIO

Copies of all laboratory and field test reports to the Contracting Officer within 24 hours of the completion of the test.

1.4 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

1.5 PAYMENT

Payment for work required to excavate channels, inlet structures and outlet structures will be made under the line item "Excavation". Payment for grading and excavation required to construct permanent roads will be included under the line item "Construct North Access Road". Payment for other work described in this section will be included with the associated line item, all costs for this work will be included in the appropriate contract unit bid prices.

PART 2 PRODUCTS

2.1 BORROW MATERIAL

2.1.1 Selection

On-site borrow materials shall be obtained only from sources within the limits of construction and are subject to approval.

PART 3 EXECUTION

3.1 EXCAVATION

Excavation of every description, regardless of material encountered, within the grading limits of the project shall be performed to the lines and grades indicated. Satisfactory excavation material shall be transported to and placed in fill areas within the limits of the work. All unsatisfactory material and surplus material shall be disposed of at locations indicated on the plans. In the event that it is necessary to remove unsatisfactory material to a depth greater than specified, the Contracting Officer shall be notified. Excavations carried below the depths indicated, without specific directions, shall, except as otherwise specified, be refilled to the proper grade with satisfactory material as directed. All additional work of this nature shall be at the Contractor's expense. Excavation shall consist of any excavation incidental to placement of inlet, outlet, and grade control structures, pilot channel, access roads and culverts. Materials that contain debris, roots, or organic material and are determined by the Contracting Officer as unsuitable for providing a stable foundation for structures shall be removed and replaced with suitable material.

3.1.1 Disposition of Materials

Disposition of excavated soil materials will be determined by the Contracting Officer as to suitability of material for incorporation in structure backfills or cover. Deposition of excavated stone (salvaged stone) will be determined by the Contracting Officer as to the suitability of material for channel bank revetments and rock substrate.

3.1.1.1 Suitable Material

If the material is suitable as excavated, it shall be stockpiled for future use, or shall be utilized in the reshaping of the banks and the construction zone, or used for rock substrate or channel bank revetment, as outlined below for each type of structure. If it is determined that the excavated soil material will be suitable after draining and manipulating, the material shall be stockpiled and allowed to drain or aerate, and when dry enough, may be utilized. If it is determined that the excavated stone (salvaged stone) will be suitable after cleaning, the material shall be cleaned using a method approved by the Contracting Officer.

3.1.1.2 Unsuitable Material

Excavated soil material that is determined by the Contracting Officer to be too wet or otherwise unsuitable or excess shall be wasted in the disposal area or as directed by the Contracting Officer. Examples of unsuitable soil material include dispersive clays, large boulders or other material that cannot be used as foundation or backfill material. Excavated stone material that is determined to be unsuitable or excess shall be disposed of within the disposal area, covered by a minimum of two feet of soil.

3.1.2 Debris

Debris encountered in the excavation operations shall be disposed of as specified under SECTION 02110 CLEARING AND GRUBBING.

3.1.3 Soil Conditions

The results of soil investigations made in the construction area are provided in the project drawings. Materials to be encountered are natural in-place alluvium deposits consisting of sand, silt, and clay. Some stone fill will also be encountered.

3.1.4 Disposal Areas

Materials which are unsuitable or excess, in the opinion of the Contracting Officer, will be ordered wasted or stock piled and shall be disposed of in approved waste disposal berm, shown on sheet G1, to the extent available. Material in excess of the waste disposal berm capacity will be disposed of at the contractors expense. Products from clearing and grubbing operations shall be disposed of as specified in SECTION 02110 CLEARING AND GRUBBING. Waste material shall not be placed in areas adjacent to embankments or the pilot channel. No special compaction will be required in the disposal areas; however, the hauling equipment shall be routed over the area to accomplish as much uniform compaction as possible. All disposal areas shall be left in a sightly condition and free to drain, with smooth natural appearing contours that blend into the existing surroundings. No excavated material shall be disposed of in the Missouri River or pilot channel areas, or in wetland areas either on-site or off-site, except approved and permitted dredging operations. The final six inches of material placed on the disposal area shall be approved by the Contracting Officer's Representantive and shall not be sand or fat clay material.

3.2 PILOT CHANNEL

The pilot channel shall be cut accurately to the grades indicated. Care shall be taken not to excavate the pilot channel below the grades indicated. All excavation under this section shall be maintained until final acceptance of the work. No excavated material shall be deposited closer to the edges of the channel than indicated and in no case less than 10 feet.

3.3 STRUCTURES

3.3.1 Inlet, Outlet and Grade Control Structures, Revetments and Structure Modifications

The alignment of these structures shall be as shown on the drawings. Structure foundations shall conform to the shapes and elevations shown on the drawings. Excavated material will be used as much as possible to fill minor deviations in the bank line as directed by the Contracting Officer. Excess material will be disposed of as specified in paragraph 3.2.4.

3.4 PREPARATION OF GROUND SURFACE FOR FILL

All vegetation, such as roots, brush, heavy sods, heavy growth of grass, and all decayed vegetable matter, rubbish, and other unsatisfactory material within the area upon which fill is to be placed, shall be removed before the fill is started. In no case will unsatisfactory material remain in or under the fill area. Sloped ground surfaces steeper than one vertical to four horizontal on which fill is to be placed shall be plowed, stepped, or broken up, as directed, in such manner that the fill material will bond with the existing surface. Prepared surfaces on which compacted fill is to be placed shall be wetted or dried as may be required to obtain the specified moisture content and density.

3.5 FILLS AND EMBANKMENTS

Fills and embankments shall be constructed at the locations and to lines and grades indicated. Stones having a dimension greater than 4 inches shall not be permitted in the upper 6 inches of fill or embankment. The material shall be placed in successive horizontal layers of 6 inches in compacted thickness for the full width of the cross section and shall be compacted as specified. Each layer shall be compacted before the overlying lift is placed. Moisture content of the fill or backfill material shall be adjusted as required, to within plus or minus 4 percent of optimum moisture content as determined from laboratory tests specified in paragraph DEFINITIONS.

3.6 COMPACTION

Fills and embankments shall be compacted to a density of 95 percent the percentage of laboratory maximum density, as determined by ASTM D 698 for maximum compacted thickness of 6 inches.

3.7 FINISHED EXCAVATION, FILLS, AND EMBANKMENTS

All areas covered by the project shall be uniformly smooth-graded, compacted, and free from irregular surface changes. The degree of finish shall be that ordinarily obtainable from blade-grader operations, except as otherwise specified. Ditches shall be finished to permit adequate drainage. The surface of areas to be seeded shall be finished to smoothness suitable for the application seed.

For subgrade areas to receive rock surfacing, the following shall be accomplished as required: (a) soft or otherwise unsatisfactory material shall be replaced with satisfactory excavated material or other approved materials; (b) rock encountered in the cut sections shall be excavated to a depth of 6 inches below finished grade for the subgrade; (c) low areas resulting from removal of unsatisfactory material or from excavation of rock shall be brought up to required grade with satisfactory materials, and the entire subgrade shall be shaped to line, grade, and cross section and shall be compacted as specified.

The surface of embankments or excavated areas for road construction or other areas on which a base course or pavement is to be placed shall vary not more than 0.05 feet from the established grade and approved cross section. Surfaces other than those that are to be paved shall be finished not more than 0.15 feet above or below the established grade or approved cross section.

3.8 PLACING TOPSOIL

Exposed earthen surfaces on completed structures that are above the existing ground surface, all disposal areas designated on the drawings, and all other areas disturbed by construction activities shall be seeded in accordance with SECTION 02935 TURF, following final grade. On areas to receive topsoil, the compacted subgrade soil shall be scarified to a 2-inch depth for bonding of topsoil with subsoil. Topsoil then shall be spread evenly to a thickness of 4 inches and graded to the elevations and slopes shown. Topsoil shall not be spread when frozen or excessively wet or dry.

3.9 Field Testing Control

Testing shall be the responsibility of the Contractor and shall be

performed by an approved commercial testing laboratory or by the Contractor subject to approval. Field density and moisture content tests shall be performed on every 5000 square feet of each lift placed. Nuclear methods of field in-place density tests ASTM D 2922 are allowed for up to 80 percent of the tests. At least 20 percent of the density tests shall be by field density methods ASTM D 1556 or ASTM D 2167).

3.10 PROTECTION

Newly graded areas shall be protected from traffic and from erosion, and any settlement or washing away that may occur from any cause, prior to acceptance, shall be repaired and grades re-established to the required elevations and slopes. All work shall be conducted in accordance with the environmental protection requirements of the contract.

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SECTION 02220

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May 2001

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SECTION 02220

EROSION CONTROL STRUCTURES

May 2001

PART 1 GENERAL

This section covers the requirements for establishing control of the inlets to the new side channels, along with modification of existing stabilization structures. In addition, this section addresses the lowering of spur dikes along the main river channel. Modifying existing structures along the floodplain will allow the desired flow through the side channel, and will ensure that the side channels remain within limits set by the project design.

1.1 LOWERING SPUR DIKES

Stone shall be removed on portions of eight dikes, from the riverward end back to the stations indicated in the drawings and specifications. The removal will go down to the specified elevation for each dike. The horizontal timber stringers will be removed between the specified stations, but the vertical pilings should be left in place wherever practical. The stone removed in this work is to be made available for use as salvaged stone, as directed in the drawings and specifications. The stone also can be placed along side the dike below the specified elevation.

1.2 DIKE TRANSIT

Dikes along the design side channels shall be modified to allow design flows through. Pilings will need to be removed down to the design invert. Complete removal of the pilings in the specified opening through the dike is an option. The pilings are to be disposed of as outlined in these specifications. Stone will be removed in the designated areas of the dikes, to the design invert. This material will be made available for use as a salvaged material for additional on-site structures.

1.3 NEW STRUCTURES

1.3.1 Inlet Structures

Each of the two inlet will require construction of a stone structure to provide adequate control of the side flow. They will be constructed mostly with quarried stone, although the design calls for a foundation layer of salvaged stone.

1.3.2 Secondary Structures

The availability of stone salvaged from the dike transit and dike lowering work will allow construction of additional stabilization features. These are to be built exclusively from salvaged stone, without specific gradation requirements. The number and extent of secondary structures will depend on how much rock of sufficient quality is salvaged from existing structures, with priorities specified in the Construction Schedule.

PART 2 MATERIAL HANDLING

2.1 QUARRIED STONE

2.1.1 Quality

All stone for the inlet structures, except for the foundation course, shall be durable quarried rock as approved by the Contracting Officer's Representative (COR). Individual pieces of stone protection in-place shall be free from cracks, seams, and other defects that will cause rapid or excessive deterioration or degradation during service. The pieces shall be approximately rectangular in cross section, free from thin slabby pieces having a maximum dimension more than four times the least dimension. This material shall be reasonably well graded from coarse to fine. The bulk stone protection material delivered to the project shall be of such quality that tests performed on representative samples have results within the limits specified. The stone protection shall contain not more than 5 percent of undesirable material by weight. Undesirable material is defined as individual pieces of stone which do not meet the quality requirements when tested as specified herein and which can be visually differentiated from the satisfactory pieces, plus dirt, sand, clay, and rock fines. Stone protection material shall not contain disintegrated granite or shale. The Contractor shall select the source or sources he proposes to use and perform the initial sampling and testing of the materials well in advance of the time when the material will be required in the work.

The Contractor shall control operations during production of stone protection material so as to insure that the material delivered and placed will meet all specification requirements. The Contractor shall perform all sampling and testing required for quality control in accordance with Section 01451 CONTRACTOR QUALITY CONTROL and as specified herein. The quarry operators shall be responsible for operating all quarries and for conditioning the area after operations are complete, in accordance with all applicable Federal, State, and local laws and regulations.

2.1.2 Field Gradation Test

A field gradation test of stone shall be performed by the Contractor to determine if the material as delivered to the job meets the gradation requirements of this specification. A sample consisting of 2 to 8 tons shall be taken of material delivered to the job and checked for gradation and elongation. The material from the initial test that meets specifications shall be placed in a well-marked area as designated by the COR to serve as a visual model for acceptable material. Material that does not meet specifications shall not be counted as a required test. The Contractor shall state in writing the method used in blasting, processing, loading, and handling this sample, and shall notify the COR any time any production methods are changed. Stone shall not be placed until the material delivered to the job has passed a field gradation test. At the discretion of the COR, random loads will be dumped or the in-place material will be sampled and a gradation control check shall be performed by the Contractor at the discretion and under the supervision of the COR.

2.1.3 Placement

The stone shall be placed within the limits shown on the drawings or as directed by the COR. This material shall be placed in such manner as to produce a reasonably well-graded mass of stone with the minimum practicable percentage of voids. It shall be placed to its full course thickness in one operation and in such manner as to minimize segregation of the stone. The larger stones shall be well distributed and the entire mass of stones in their final position shall be roughly graded to conform to the gradation specified. The finished structure shall be free from objectionable pockets of small stones and clusters of larger stones. Placing the stone in layers will not be permitted. The desired distribution of the various sizes of

stones throughout the mass shall be obtained by selective loading of the material at the quarry or other source; by controlled dumping of successive loads during final placing and placement. All stone shall be placed by means of clam, orange peel, or skip box. However, zero drop height placement procedures are to be utilized for stone to avoid displacing any underlying layer of salvaged stone. Dumping of stone at the top of slopes and rolling or pushing into place will not be permitted. Manipulating or moving stone at any time prior to placement by means of dozers or other blade equipment will not be permitted. Rearranging of individual stones by mechanical equipment or by hand will be required to the extent necessary to obtain a reasonably well graded distribution of stone sizes as specified above.

2.2 PILING REMOVAL

The timber pilings are to be removed to the elevation of the design invert (except for lowering of the spur dikes). This can be accomplished either by breaking them off, or removing them completely. The timber stringers also will be removed from the designated areas of the dikes and revetment. The resulting scrap timber shall be disposed of in a state-licensed landfill.

2.3 SALVAGEABLE STONE

All stone removed from designated portions of existing structures is considered salvageable. However, factors such as previous degradation, breakage in handling, and excessive comingling of fines could yield material below a level acceptable for building some of the secondary control features.

PART 3 STATIONS AND QUANTITIES

3.1 LOWERING SPUR DIKES

Eight dikes as listed in the Construction Schedule.

3.2 INLET STRUCTURES

Two structures, as listed in the Construction Schedule.

3.3 DIKE TRANSITS

Five transits through/over dikes, as listed in the Construction Schedule.

3.4 OUTLETS

Three sites where side channels will require lowering of Revetment 695.95-A, as outlined in the Construction Schedule.

3.5 SECONDARY STRUCTURES

Stone removed from existing structures during construction of the project features outlined above shall be salvaged to the extent practical, and placed as directed in the drawings and specifications. Except for the foundation course for the inlet structures, the structures to comprise salvaged stone are considered secondary to the overall project, and thus may be modified or eliminated depending the volume and condition of the salvaged stone. The COR will determine the extent of such modifications. The location and volumes for the various sites to features to receive

salvaged stone are itemized in the construction schedule.

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SECTION 02482

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May 2001

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SECTION 02482

DREDGING
May 2001

PART 1 GENERAL

1.1 SUBMITTALS

Submit the following in accordance with Section 01330, "Submittal Procedures."

SD-02 Shop Drawings

Submerged pipeline

Indicate pipeline location and installation details

1.2 MATERIAL TO BE REMOVED

The material to be dredged consists primarily of sand, with areas of sandy clay.

1.3 ARTIFICIAL OBSTRUCTIONS

Except as indicated, the Government has no knowledge of cables, pipes or other artificial obstructions or of any wrecks, wreckage or other material that would necessitate the use of explosives or any additional equipment for economical removal. If actual conditions differ from those stated or shown on the drawings, an adjustment in contract price or time for completions may be required, in accordance with *FAR 52.236-2, Differing Site Conditions."

1.4 OVERDEPTH DREDGING

To cover unavoidable inaccuracies of dredging processes, material actually removed to a depth of 0.5 feet below the depth specified and within the dredging limits will be allowed. The Contractor will not be paid for any dredging beyond the overdepth allowance, and shall make every effort to achieve the specified elevations without over dredging.

1.5 SIDE SLOPES AND BOTTOM WIDTH

The dredging operation shall produce a minimum bottom width as shown in the contract drawings, after the side slopes have assumed their post-dredging stable form (i.e, the soil's natural angle of repose). An allowance of 1.0 foot will be made for dredging beyond the indicated or specified bottom width. Excavation outside of this specified width (with the allowance) shall be at the contractor's expense.

1.6 REGULATORY COMPLIANCE

The contractor shall comply with conditions and requirements of the Department of the Army (DA) Section 10/Section 404 authorization, along with permits issued by Nebraska and Iowa. The Contracting Officer's Representative (COR) will provide a copy of the DA authorization for dredging and disposal of material as indicated. The Contractor shall keep

the COR informed of any significant changes in the material disposal operation (e.g., rate and location of discharge). The Contractor's responsibility for regulatory compliance shall extend to all pertinent federal, state and local requirements regarding water, air and noise.

1.7 ENVIRONMENTAL PROTECTION REQUIREMENTS

The Contractor shall provide environmental protective measures for the dredging operation, and maintain them during the life of the contract. Measures also will be required to correct any negative situations that may arise during dredging (e.g., spillage of oil or debris). The Contractor shall comply with federal, state and local regulations.

PART 2 PRODUCTS (Not applicable)

PART 3 EXECUTION

3.1 INSPECTION

The Contractor shall inspect the operation, keep records of work performed, and ensure that markers are in place and used for the intended purpose. When required, the Contractor shall provide transportation for the COE to and from disposal sites, and between the dredging plant and adjacent points on the bank.

3.2 CONDUCT OF DREDGING WORK

3.2.1 Interference with Navigation

The dredging shall be conducted in a manner that will minimize interference with the use of channels and passages. The COR shall direct the shifting or moving of dredges or the interruption of dredging operations, to accommodate the movement of vessels and floating equipment on the river's navigation channel, if necessary.

3.2.2 Lights

The Contractor is responsible for providing lights for floating plants, pipelines and markers, that shall be on between sunset and sunrise, and during periods of restricted visibility. This requirement for lights shall extend to buoys that could endanger or obstruct navigation. When night work is underway, the lights shall provide for adequate observation of dredging operations from sunset to sunrise. Lighting shall conform to U.S. Coast Guard requirements for visibility and color.

3.2.3 Markers

The Contractor shall furnish, set and maintain markers needed to define the disposal pipeline in the river's main channel. The Contractor shall furnish survey lines, points and elevations necessary for the setting of ranges, gages and buoys.

3.2.4 Plant

The Contractor is responsible for maintaining the plant, scows, barges, pipelines, and associated equipment to meet the project requirements. This maintenance shall include prompt repair of leaks or breaks along the pipelines, and removal of dredged material resulting from such leaks.

3.2.5 Disposal of Excavated Material

The Contractor shall provide for the safe transportation of dredged materials, and its disposal in the main channel, as specified in the DA authorization and the state water quality certifications. Disposal of

dredged material in unauthorized places is forbidden.

3.2.5.1 Method of Disposal

The dredged material will be conveyed as a slurry, and disposed of according to the design of the hydraulic dredging equipment. The Contractor is responsible for design, placement, maintenance and removal of the discharge line(s). Prior to placing the dredge discharge lines, the Contractor shall flag the alignment(s) and clearing limits needed for placing the discharge lines or water supply lines. The alignment of the discharge line(s) will require approval by the COR prior to clearing vegetation and placement of the discharge line. However, the Contractor does not require COR approval for clearing a 15-foot wide path for placing lines and side sloping, provided this clearing does not involve removing any trees having a diameter at breast height of more than six inches. Any areas disturbed or damaged by placement and/or operation of the discharge line(s) shall be restored to their original condition at the Contractor's expense. Stipulations for the discharge pipe regarding approval by the COR shall also apply to any pipelines needed for providing makeup water for the discharge slurry. Pipeline for hydraulic dredging shall discharge into river's main channel, or into any disposal area approved by the COR.

3.2.5.2 Disposal in Approved Fill Areas

If any of the dredged material is to be placed on land with the approval of the COR, the Contractor shall provide and maintain any containment dikes, ditches, sluiceways and other construction necessary to confine and retain the material.

3.2.6 Navigation Warnings

The Contractor shall furnish and maintain navigation warning signs along and at the end of the pipeline.

3.2.7 Method of Communication

The Contractor shall provide a system of communication between the dredge crew and the crew at the disposal area. A portable two-way radio is acceptable.

3.2.8 Salvaged Material

Anchors, chains, firearms and other articles of value, which are brought to the surface during dredging operations, shall remain or become the property of the Government, and shall be deposited on shore at a convenient location near the work site, as directed.

3.2.9 Safety of Structures

The prosecution of work shall ensure the stability of piers, bulkheads, and other structures lying on or adjacent to the site of the work, insofar as such structures may be jeopardized by dredging operations. The Contractor is responsible for repairing any damage resulting from the dredging operations, if such damage is the result of variation in locations or depth of dredging from that indicated or permitted under the contract.

3.2.10 Plant Removal

Upon completion of the work, the Contractor shall promptly remove plant, including ranges, buoys, piles and other markers or obstructions.

3.3 SURVEYS DURING PROGRESS OF WORK

Contract depth will be determined by surveys taken behind the dredge as work progresses. The Contractor shall take progress surveys.

3.4 FINAL EXAMINATION AND ACCEPTANCE

As soon as practicable after the completion of areas, which in the opinion of the COR will not be affected by further dredging, each area will be examined by the COR by sounding. Any shoals and lumps discovered in the process shall be removed by dragging the bottom or by dredging. However, if the bottom is soft and the shoal areas form no material obstruction to navigation, removal may be waived at the discretion of the COR. The Contractor will be notified when soundings are to be made and will be permitted to accompany the sounding crew and to inspect the data and methods used in conducting this data gathering. When areas are found to be in a satisfactory conditions, the work therein will be accepted as complete. The depth measurements described in this paragraph are designed to ensure that work is producing a satisfactory product. They do not relieve the contractor of his responsibility to survey the work in accordance with Section 0800.

3.4.1 Discharge Conditions

3.4.1.1 Period

The discharge of hydraulic dredge material shall occur only during the period when the Missouri River flows are greater than 25,000 cfs, which corresponds to a Blair gage reading of 12.85 feet. Discharges typically are above 25,000 cfs from 1 April to 30 November.

3.4.1.2 Outfall

The end of the discharge pipe shall be submerged at a location in the river where rapid mixing and integration into the bed load will occur quickly. The optimal area for such sediment transport is the thalweg, which would be approximately 25 feet from the right bank. The outfall shall be suspended 4 to 6 feet off the riverbed, in an area where the water is at least eleven feet deep. The outfall also will be downstream of the municipal water intake at Blair. The dredging operation for any outfall location will not commence until the COR has approved of the outfall placement.

3.4.1.3 Number of Dredges

The Contractor will be allowed to operate more than one dredge at a time provided the total discharge capacity of all operating dredges does not exceed total dredge volume (volume and sediment) to Missouri River discharge ratios tabulated below.

Dredge Discharge, GPM (water and sediment)	Missouri River at Blair	
	Discharge (cfs)	Stage (feet)
8,000	22,300	11.4
12,000	33,450	15.6
16,000	44,600	17.9
20,000	55,750	19.9
24,000	66,850	21.5

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SECTION 02500

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06/00

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SECTION 02500

CRUSHED ROCK SURFACING
06/00

PART 1 GENERAL

The work covered by this section consists of furnishing all plant, labor, materials and equipment, and performing all operations necessary to furnish and place the crushed rock surfacing material for access roads and culvert bedding as specified herein, shown on the drawings, or otherwise directed.

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 75 (1997) Standard Practice for Sampling Aggregates

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having an "FIO" designation are for information only. The designation following the G indicates which COE office reviews the submittals, RE indicates Resident Engineer. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-03 Product Data

Waybills and Delivery Tickets; G-RE

Copies of waybills or delivery tickets shall be submitted during the progress of the work. Before the final payment is allowed, waybills and certified delivery tickets shall be furnished for all surfacing materials actually used in the construction.

SD-06 Test Reports

Sampling and Testing; G-RE

The Contractor shall submit copies of test results to the Contracting Officer in accordance with paragraph 3.5, Sampling and Testing.

1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

1.4 PAYMENT

Payment for work required for crushed rock surfacing shall be made under

the associated line item or option. Payment for crushed rock bedding for culverts will be paid under the same line item or option as the culvert itself.

PART 2 PRODUCTS

2.1 Crushed Rock Surfacing

Surfacing material shall meet the requirements for crushed rock for surfacing in Nebraska Department of Roads Standard Specifications for Highway Construction, 1997 English Units Edition.

2.1.1 Quality

It shall be the responsibility of the Contractor to obtain materials that will meet the quality requirements specified in Division 1000 of Nebraska Department of Roads Standard Specifications for Highway Construction, 1997 English Units Edition.

2.1.2 Gradation

Surfacing material shall conform to Table 1033.08, Crushed Rock for Surfacing Gradation Limits, in Nebraska Department of Roads Standard Specifications for Highway Construction, 1997 English Units Edition.

PART 3 EXECUTION

3.1 EQUIPMENT

All plant, equipment, tools and machines used in the performance of the work shall be approved prior to commencement of work, and shall be maintained in satisfactory working condition at all times.

3.2 PREPARATION OF AREAS TO BE SURFACED

The subgrade shall be cleaned of all foreign materials. The surface of the subgrade will be inspected by the Contracting Officer for adequate compaction and surface tolerances. The upper six (6) inches of the subgrade shall be scarified, reworked and compacted to a firm unyielding surface. Ruts or soft yielding spots that may appear in the subgrade, areas having inadequate compaction, and deviations of the surface which are in excess of the requirements shall be corrected to the lines and graded to all specification requirements. In the event that the subgrade becomes rutted or eroded, the Contractor will be required to blade the rutted or eroded area smooth, prior to placing the surfacing material thereon. Care shall be exercised to maintain the profile grade of the road. Such blading shall be at the Contractor's expense.

3.3 SURFACING OPERATIONS

The subgrade shall be shaped to a smooth surface having proper grade and cross section. After performing all shaping or removal of ruts from the subgrade, all surfaces shall be disced or lightly scarified, if necessary, to break the crust. Discing or scarifying shall be made to a depth of six (6) inches.

The surfacing material shall be placed in one lift with a layer thickness as shown on the drawings using spreader boxes. The surfacing material

shall then be compacted with a minimum 10-ton steel wheel roller. The material shall be kept in a moist state to facilitate compaction. The entire lift shall be rolled with a minimum of three (3) passes. No density requirements are specified but a firm unyielding smooth riding surface of uniform texture shall be obtained. The completed thickness of surfacing shall be within 1/2-inch plus or minus of the thickness indicated on the drawings.

Hauling of surfacing material will not be permitted, when in the opinion of the Contracting office, conditions are such that hauling operations will cause undue damage to roads in accordance with section 01200, paragraph PROTECTION OF EXISTING FACILITIES AND WORKS. The Contractor shall satisfactorily repair at his own expense any damages to the turf, roads or levees caused by his operation.

3.4 MAINTENANCE

The Contractor shall maintain the surfacing in satisfactory condition until the completed work has been accepted.

3.5 SAMPLING AND TESTING

3.5.1 General

The Contractor shall select his source and submit initial test results for tests indicated as initial tests not less than 10 days in advance of the time the surfacing materials will be required in the work. The surfacing materials delivered to the project will meet the specified requirements. Unless otherwise directed, surfacing materials shall be sampled in accordance with ASTM D 75

3.5.2 Quality Control and Testing Frequency

All sampling and testing of materials for quality control and gradation shall be performed by the Contractor at no cost to the Government. The Contracting Officer may perform verification tests as considered necessary. The Contractor shall furnish certified test results from an approved commercial testing laboratory or a laboratory maintained by the producer of the surfacing material showing that the surfacing material conforms to the applicable requirements specified.

3.5.2.1 Control Tests

One gradation test shall be performed for each 500 tons of surfacing material delivered to the project.

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SECTION 02630

CULVERTS

03/00

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SECTION 02630

CULVERTS

03/00

PART 1 GENERAL

This section provides specifications for the installation of reinforced concrete culverts and flared end sections. All culverts will have flared end sections at inlet and outlets.

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM C 76	(1999) Reinforced Concrete Culvert, Storm Drain, and Sewer Pipe
ASTM C 361	(1999) Standard Specification for Reinforced Concrete Low-Head Pressure Pipe
ASTM C 443	(1998) Joints for Circular Concrete Sewer and Culvert Pipe, Using Rubber Gaskets
ASTM D 698	(1991) Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/cu. ft. (600 kN-m/cu.m.))
ASTM D 2167	(1994) Density and Unit Weight of Soil in Place by the Rubber Balloon Method
ASTM D 2922	(1996e1) Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth)
ASTM D 3017	(1988; R 1996e1) Water Content of Soil and Rock in Place by Nuclear Methods (Shallow Depth)

1.2 PAYMENT

1.2.1 Pipe Culverts and Flared End Sections

Payment will be made for the work installed as shown on contract drawings under line items "Culverts".

1.2.2 Backfill Replacing Unstable Material

Separate payment will not be made for the select granular material required to replace unstable material for foundations under pipes or drainage structures. The lump sum bid will constitute full compensation for this backfill material, including removal and disposal of unstable material and

all excavating, hauling, placing, compacting, and all incidentals necessary to complete the construction of the foundation satisfactorily.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-03 Product Data

Placing Pipe; FIO

Printed copies of the manufacturer's recommendations for installation procedures of the material being placed, prior to installation.

SD-07 Certificates

Materials; FIO

Manufacturer's Certification of Compliance, that all materials used on this project meet the requirements of the specification under which it is furnished.

Determination of Density; FIO

Copies of all laboratory and field test reports to the Contracting Officer within 24 hours of the completion of the test.

1.4 DELIVERY, STORAGE, AND HANDLING

1.4.1 Delivery and Storage

Materials delivered to site shall be inspected for damage, unloaded, and stored with a minimum of handling. Materials shall not be stored directly on the ground. The inside of pipes and fittings shall be kept free of dirt and debris. The Contractor shall have a copy of the manufacturer's instructions available at the construction site at all times and shall follow these instructions unless directed otherwise by the Contracting Officer.

1.4.2 Handling

Materials shall be handled in a manner that ensures delivery to the trench in sound, undamaged condition. Pipe shall be carried to the trench, not dragged.

PART 2 PRODUCTS

2.1 CULVERTS

2.1.1 Concrete Pipe

Pipe shall be ASTM C 76, Class II, wall B minimum. The pipe joints and rubber gaskets shall conform to ASTM C 361. The rubber gasket shall be the confined "O" Ring Type. Performance requirements for pipe joints shall be in accordance with ASTM C 443. Holes through the pipe, such as those for handling, will not be permitted.

2.1.2 Flared End Sections

Sections shall be of a standard design of the pipe manufacturer and fabricated from the same materials as specified for the pipe.

PART 3 EXECUTION

3.1 EXCAVATION FOR PIPE CULVERTS

Excavation of trenches, and for appurtenances and backfilling for culverts and storm drains, shall be in accordance with the requirements specified below.

3.1.1 Trenching

The width of trench, if any, in which pipe are placed shall be sufficient to permit thorough tamping of bedding material under and around the pipes. At the Contractor's option, the trench may be cut wide enough to accommodate a tamping type roller on each side of the pipe. Sheeting and bracing, where required, shall be placed within the trench width as required.

3.1.2 Removal of Unstable Material

Where wet or otherwise unstable soil incapable of properly supporting the pipe, as determined by the Contracting Officer, is unexpectedly encountered in the bottom of a trench, such material shall be removed to the depth required and replaced to the proper grade with select granular material, compacted as provided in paragraph BACKFILLING. When removal of unstable material is due to the fault or neglect of the Contractor in his performance of shoring and sheeting, water removal, or other specified requirements, such removal and replacement shall be performed at no additional cost to the government.

3.2 BEDDING

The bedding surface for the pipe shall provide a firm foundation of uniform density throughout the entire length of the pipe. The surface upon which pipe sections are to rest shall be brought to a suitable elevation to fit the desired grade and camber. The pipe shall be bedded in a soil foundation accurately shaped and rounded to conform to the lowest one-fourth of the outside portion of circular pipe for the entire length of the pipe. When necessary, the bedding shall be tamped. Bell holes and depressions for joints shall be not more than the length, depth, and width required for properly making the particular type of joint.

3.3 PLACING PIPE

Pipe and accessories shall be handled in such manner as to insure delivery to the trench in sound, undamaged condition. Rubber gaskets that are not to be installed immediately shall be stored in a cool dark place and out of the direct rays of the sun. Pipe and accessories shall be carefully lowered into the trench by means of a derrick, ropes, belt slings, or other suitable equipment. Under no circumstances shall any of the piping materials be dropped or dumped into the trench. Pipe shall be laid to the lines and grades indicated on the drawings. Maximum allowable deflection from a straight line or grade will be 5 degrees unless otherwise recommended by the manufacturer. Except as authorized by the Contracting

Officer, pipe shall be laid with the spigot pointing in the direction of flow. The full length of each pipe shall rest solidly upon the pipe bed, with recesses excavated to accommodate bells and joints. Pipe that has the grade or joint disturbed after laying shall be taken up and relaid. Pipe shall not be laid in water or when trench conditions are unsuitable for the work. Before laying pipe, the outside surface of the spigot and the inside surface of the bell shall be cleaned and an acceptable vegetable-compound lubricant applied to the inside surface of the bell and to the rubber gasket. After the pipe has been forced together, the position of the gasket shall be checked with a feeler gage.

3.4 JOINTING

Gaskets and Jointing Materials shall be installed in accordance with the recommendation of the particular manufacturer in regard to the use of lubricants, cements, adhesives, and other special installation requirements. Surfaces to receive lubricants, cements, or adhesives shall be clean and dry. Gaskets and jointing materials shall be affixed to the pipe not more than 24 hours prior to the installation of the pipe, and shall be protected from the sun, blowing dust, and other deleterious agents at all times. Gaskets and jointing materials shall be inspected before installation of the pipe, and any loose or improperly affixed gaskets and jointing materials shall be removed and replaced. The pipe shall be aligned with the previously installed pipe and the joint pulled together. If, while making the joint, the gasket or jointing material becomes loose and can be seen through the exterior joint recess when the joint is pulled up to within 1 inch of closure, the pipe shall be removed and the joint remade. After the pipe has been installed and before the concrete cradle or any backfill had been placed, the exposed outside pipe joint shall be filled with grout. The interior joint shall be filled with cement-mortar after pipe installations if required. The interior joint shall ideally show a 1/4-inch gap, and in no case shall the gap be over 1/2-inch.

3.5 BACKFILLING

After the pipe has been properly bedded, selected material from excavation or borrow, at a moisture content that will facilitate compaction, shall be placed along both sides of pipe in layers not exceeding 6 inches in compacted depth. The backfill shall be brought up evenly on both sides of pipe for the full length of pipe. The fill shall be thoroughly compacted under the haunches of the pipe. Each layer shall be thoroughly compacted with mechanical tampers or rammers. This method of filling and compacting shall continue until the fill has reached an elevation of at least 12 inches above the top of the pipe. The remainder of the trench shall be backfilled and compacted by spreading and rolling or compacted by mechanical rammers or tampers in layers not exceeding 6 inches. Tests for density shall be made as necessary to ensure conformance to the compaction requirements specified below.

When compacting by rolling or operating heavy equipment parallel with the pipe, displacement of or injury to the pipe shall be avoided. Movement of construction machinery over a culvert or storm drain at any stage of construction shall be at the Contractor's risk. Any damaged pipe shall be repaired or replaced.

3.5.1 Compaction

3.5.1.1 General Requirements

Cohesionless materials include gravels, gravel-sand mixtures, sands, and gravelly sands. Cohesive materials include clayey and silty gravels, gravel-silt mixtures, clayey and silty sands, sand-clay mixtures, clays, silts, and very fine sands. When results of compaction tests for moisture-density relations are recorded on graphs, cohesionless soils will show straight lines or reverse-shaped moisture-density curves, and cohesive soils will show normal moisture-density curves.

3.5.1.2 Minimum Density

Backfill over and around the pipe and backfill around and adjacent to drainage structures shall be compacted at the approved moisture content to the following applicable minimum density, which will be determined as specified below.

- a. Under unpaved or turfed traffic areas, density shall not be less than 90 percent of maximum density for cohesive material and 95 percent of maximum density for cohesionless material.
- b. Under non-traffic areas, density shall be not less than that of the surrounding material.

3.5.2 Determination of Density

Testing shall be the responsibility of the Contractor and performed at no additional cost to the Government. Testing shall be performed by an approved commercial testing laboratory or by the Contractor subject to approval. Tests shall be performed in sufficient number to ensure that specified density is being obtained. Laboratory tests for moisture-density relations shall be made in accordance with ASTM D 698 except that mechanical tampers may be used provided the results are correlated with those obtained with the specified hand tamper. Field density tests shall be determined in accordance with ASTM D 2167 or ASTM D 2922. When ASTM D 2922 is used, the calibration curves shall be checked and adjusted, if necessary, using the sand cone method as described in paragraph Calibration of the referenced publications. ASTM D 2922 results in a wet unit weight of soil and when using this method ASTM D 3017 shall be used to determine the moisture content of the soil. The calibration curves furnished with the moisture gauges shall be checked along with density calibration checks as described in ASTM D 3017 or ASTM D 2922. Test results shall be furnished the Contracting Officer. The calibration checks of both the density and moisture gauges shall be made at the beginning of a job on each different type of material encountered and at intervals as directed.

-- End of Section --

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SECTION 02921

SEEDING

06/98

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-- End of Section Table of Contents --

SECTION 02921

SEEDING
06/98

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AGRICULTURAL MARKETING SERVICE (AMS)

AMS-01 (Aug 95) Federal Seed Act Regulations Part 201

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 that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-03 Product Data

Equipment G-RE

Manufacturer's literature including physical characteristics, application and installation instructions for equipment.

A listing of equipment to be used for the seeding operation.

Delivery G-RE

Delivery schedule.

Finished Grade G-RE

Finished grade status.

Quantity Check G-RE

Bag count or bulk weight measurements of material used compared with area covered to determine the application rate and quantity installed.

Seed Establishment Period G-RE

Calendar time period for the seed establishment period. When there is more than one seed establishment period, the boundaries of the seeded area covered for each period shall be described.

Maintenance Record G-RE

Maintenance work performed, area repaired or reinstalled, diagnosis for unsatisfactory stand of grass plants.

Soil Test G-RE

Certified reports of inspections and laboratory tests, prepared by an independent testing agency, including analysis and interpretation of test results. Each report shall be properly identified. Test methods used and compliance with recognized test standards shall be described.

SD-07 Certificates

Seed G-RE

Prior to the delivery of materials, certificates of compliance attesting that materials meet the specified requirements. Certified copies of the material certificates shall include the following:

a. Seed. Classification, botanical name, common name, percent pure live seed, minimum percent germination and hard seed, maximum percent weed seed content, and date tested.

1.3 SOURCE INSPECTION

Non-applicable.

1.4 DELIVERY, INSPECTION, STORAGE, AND HANDLING

1.4.1 Delivery

A delivery schedule shall be provided at least 10 calendar days prior to the first day of delivery.

1.4.2 Inspection

Seed shall be inspected upon arrival at the job site for conformity to species and quality. Seed that is wet, moldy, or bears a test date five months or older, shall be rejected. Unacceptable materials shall be removed from the job site.

1.4.3 Storage

Materials shall be stored in designated areas. Seed shall be stored in cool, dry locations away from contaminants. Chemical treatment material shall be stored according to manufacturer's instructions and not with seeding operation materials.

1.4.4 Handling

Except for bulk deliveries, materials shall not be dropped or dumped from vehicles.

1.4.5 Time Limitation

Time limitation for holding seed in the slurry shall be a maximum 24 hours.

PART 2 PRODUCTS

2.1 SEED

2.2 Seed Classification

State-certified seed of the latest season's crop shall be provided in original sealed packages bearing the producer's guaranteed analysis for percentages of mixture, purity, germination, hard seed, weed seed content, and inert material. Labels shall be in conformance with AMS-01 and applicable state seed laws.

2.3 Permanent Seed Species and Mixtures

Permanent seed species and mixtures shall not be included in this operation.

2.4 Temporary Seed Species

Temporary seed species for surface erosion control, weed control, or overseeding shall be as follows:

Common Name	PLS Pounds per acre
Common Oats	50

2.1.4 Quality

Weed seed shall be a maximum 1 percent by weight of the total mixture.

2.1.6 Substitutions

Substitutions will not be allowed without written request and approval from the Contracting Officer.

PART 3 EXECUTION

3.1 INSTALLING SEED TIME AND CONDITIONS

3.1.1 Seeding Time

Seed shall be installed from April 1 to June 15 for spring establishment and from August 1 to September 15 for fall establishment.

3.1.2 Seeding Conditions

Seeding operations shall be performed only during periods when beneficial results can be obtained. When drought, excessive moisture, or other unsatisfactory conditions prevail, the work shall be stopped when directed.

When special conditions warrant a variance to the seeding operations, proposed alternate times shall be submitted for approval.

3.2 SITE PREPARATION

3.2.1 Finished Grade

The Contractor shall verify that finished grades are as indicated on drawings and smooth grading and compaction requirements have been completed in accordance with Section 02300 EARTHWORK, prior to the commencement of the seeding operation.

3.2.1 Tillage

Soil on slopes up to a maximum 3-horizontal-to-1-vertical shall be tilled to a minimum 4 inch depth. On slopes between 3-horizontal-to-1-vertical and 1-horizontal-to-1 vertical, the soil shall be tilled to a minimum 2 inch depth by scarifying with heavy rakes, or other method. Rototillers shall be used where soil conditions and length of slope permit. On slopes 1-horizontal-to-1 vertical and steeper, no tillage is required. Drainage patterns shall be maintained as indicated on drawings. Areas compacted by construction operations shall be completely pulverized by tillage. Soil used for repair of surface erosion or grade deficiencies shall conform to topsoil requirements. The pH adjuster, fertilizer, and soil conditioner may be applied during this procedure.

3.2.2 Prepared Surface

3.2.3.1 Preparation

The prepared surface shall be a maximum 1 inch below the adjoining grade of any surfaced area. New surfaces shall be blended to existing areas. The prepared surface shall be completed with a light raking to remove debris.

3.2.3.2 Field Area Debris

Debris and stones over a minimum 3 inch in any dimension shall be removed from the surface.

3.2.2.1 Protection

Areas with the prepared surface shall be protected from compaction or damage by vehicular or pedestrian traffic and surface erosion.

3.3 INSTALLATION

Prior to installing seed, any previously prepared surface compacted or damaged shall be reworked to meet the requirements of paragraph SITE PREPARATION. Seeding operations shall not take place when the wind velocity will prevent uniform seed distribution.

3.3.1 Installing Seed

Seeding method shall be Broadcast Seeding. Seeding procedure shall ensure even coverage. Gravity feed applicators, which drop seed directly from a hopper onto the prepared soil, shall not be used because of the difficulty in achieving even coverage, unless otherwise approved. All areas disturbed by construction and the disposal area shall be seeded with temporary seed at the rates specified.

3.3.1.1 Broadcast Seeding

Seed shall be uniformly broadcast at the rate of 50 pounds per acres using broadcast seeders. Half the total rate of seed application shall be broadcast in 1 direction, with the remainder of the seed rate broadcast at

90 degrees from the first direction. Seed shall be covered a maximum 1/4 inch depth by disk harrow, steel mat drag, cultipacker, or other approved device.

3.3.1.2 Rolling

The entire area shall be firmed with a roller not exceeding 90 pounds per foot roller width. If the area to be firmer is wet, rolling the area will not take place until drier conditions occur. Slopes over a maximum 3-horizontal-to-1 vertical shall not be rolled.

3.4 QUANTITY CHECK

For materials provided in bags, the empty bags shall be retained for recording the amount used. For materials provided in bulk, the weight certificates shall be retained as a record of the amount used. The amount of material used shall be compared with the total area covered to determine the rate of application used. Differences between the quantity applied and the quantity specified shall be adjusted as directed.

3.3 RESTORATION AND CLEAN UP

3.3.1 Restoration

Existing turf areas, pavements, and facilities that have been damaged from the seeding operation shall be restored to original condition at Contractor's expense.

3.3.2 Clean Up

Excess and waste material shall be removed from the seeded areas and shall be disposed offsite. Adjacent paved areas shall be cleaned.

3.4 PROTECTION OF INSTALLED AREAS

Immediately upon completion of the seeding operation in an area, the area shall be protected against traffic or other use by erecting barricades and providing signage as required, or as directed. Signage shall be in accordance with Section 10430 EXTERIOR SIGNAGE.

3.5 SEED ESTABLISHMENT PERIOD

3.5.1 Commencement

The seed establishment period to obtain a healthy stand of grass plants shall begin on the first day of work under this contract and shall end 3 months after the last day of the seeding operation. Written calendar time period shall be furnished for the seed establishment period. When there is more than 1 seed establishment period, the boundaries of the seeded area covered for each period shall be described. The seed establishment period shall be modified for inclement weather, shut down periods, or for separate completion dates of areas.

3.5.2 Satisfactory Stand of Grass Plants

Grass plants shall be evaluated for species and health when the grass plants are a minimum 1 inch high.

3.5.2.1 Field Area

A satisfactory stand of grass plants from the seeding operation for a field area shall be a minimum 10 grass plants per square foot. The total bare spots shall not exceed 2 percent of the total seeded area.

3.5.3 Maintenance During Establishment Period

Maintenance of the seeded areas shall include eradicating weeds, insects and diseases; protecting embankments and ditches from surface erosion; maintaining erosion control materials and mulch; protecting installed areas from traffic; mowing; watering; and post-fertilization.

3.5.3.1 Repair or Reinstall

Unsatisfactory stand of grass plants and mulch shall be repaired or reinstalled, and eroded areas shall be repaired in accordance with paragraph SITE PREPARATION.

3.5.3.2 Maintenance Record

A record of each site visit shall be furnished, describing the maintenance work performed; areas repaired or reinstalled; and diagnosis for unsatisfactory stand of grass plants.

-- End of Section --

CALIFORNIA BEND RESTORATION PROJECT
 Missouri River, Mile 650.2 to 648.5 (Right Bank)
 Washington County, Nebraska

October 2001

CONSTRUCTION SCHEDULE

<u>EXCAVATION</u>	<u>LENGTH</u>	<u>STATIONING</u>	<u>DESCRIPTION</u>	<u>Cubic Yards</u>
Channel A	3095	0+00 to 30+95	Upper inlet channel	145,330
Channel B	7945	0+00 to 79+45	Lower inlet to lower outlet	210,130
Channel C	1320	0+00 to 13+20	Upper outlet	37,460
Channel D	534	0+00 to 5+34	Middle outlet	14,410
Inlets Structures			Upper inlet: 19,340 c.y.; Lower inlet: 18,550 c.y.	37,890
Sills, Upper and Middle Outlets			Upper Outlet: 635 c.y.; Middle Outlet: 670 c.y.	1,310
Sill, Lower Outlet			Lower outlet sill	<u>1,360</u>
Total:				<u>447,890</u>

NEW STRUCTURES, USING QUARRIED STONE

<u>STRUCTURE</u>	<u>LENGTH</u> (feet)	<u>STATIONING</u>	<u>DESCRIPTION</u>	<u>RIVER MILE</u>	<u>Design Crest Elev.</u>	<u>STONE</u> (tons)	<u>SALVAGED</u> Stone (c.y.) ¹
INL 698.62-CB	225	-1+44 to 0+81	Upper inlet grade control structure	650.0	989.36	5110	975
INL 697.80-CB	210	-1+61 to 0+49	Lower inlet grade control structure	649.7	989.03	<u>4820</u>	<u>920</u>
Totals:						<u>9930</u>	<u>1895</u>

LOWERING OF STRUCTURES²

<u>DIKE</u>	<u>LENGTH</u> (feet)	<u>STATIONING</u>	<u>DESCRIPTION</u>	<u>RIVER MILE</u>	<u>DESIGN ELEV.</u>	<u>STONE</u> ³ (c.y.)
699.05	72	2+28 to 3+00	Lower dike along main channel	650.2	992.49	130
698.67	70	2+05 to 2+75		650.1	992.39	125
698.42	100	2+95 to 3+95		650.0	992.31	175
698.11	100	3+95 to 4+95		649.9	992.21	275
697.81	70	4+80 to 5+50		649.8	992.13	160
697.76	122	4+48 to 5+70		649.7	992.04	175
697.71	150	7+15 to 8+65		649.6	991.95	210
695.95	75	11+97 to 12+72	Lower dike along main channel	649.4	991.84	285
"	114	1+84 to 2+98	Lower dike to Channel B invert	649.4	988.93	1280

continued next page

CONSTRUCTION SCHEDULE

California Bend Restoration Project - Missouri River M. 650.2 to 648.5

October 2001

LOWERING OF STRUCTURES (continued)

<u>DIKE</u>	<u>LENGTH</u>	<u>STATIONING</u>	<u>DESCRIPTION</u>	<u>MILE</u>	<u>ELEV.</u>	<u>STONE</u>	
695.6	598	1+02 to 7+00	Lower dike to Channel B invert	649.2	988.60	8960	
695.35	200	1+42 to 3+42	Cut or remove pilings for Channel B.	649.0	988.48	---	
695.2	200	1+37 to 3+37	Cut or remove pilings for Channel B.	648.9	988.36	---	
<u>695.1</u>	110	0+82 to 1+92	Lower dike to Channel B invert	648.8	988.29	90	
REV 695.95-A	227	83+37 to 85+64	Lower revetment for upper outlet (Channel C)	649.1	988.52	880	
"	"	223	99+00 to 101+23	Lower revetment for middle outlet (Channel D)	648.8	988.28	1110
"	"	956	109+20 to 118+76	Lower revetment for lower outlet (Channel B)	648.5	987.98	<u>4060</u>
						Total:	<u>17920</u> c.y.

PLACEMENT OF SALVAGED STONE ⁴

	<u>LENGTH, Feet</u>			<u>DESCRIPTION</u>	<u>MILE</u>	<u>STONE</u> c.y.	<u>PRIORITY</u>	<u>ELEVATIONS</u>	
								<u>BASE</u>	<u>CREST</u>
REV 695.95	635	3+15 to	9+50	Add stone to crest, at approx. 1 c.y./lin. ft.	649.4	635	3 ⁵	varies	varies
REV 695.6-CB	558	-5+30 to	0+28	Construct west bank revet., N. of dike 695.6	649.2	770	1	988.6	993.6
"	970	0+28 to	9+98	Construct west bank revet., S. of dike 695.6	649.1	1485	1	988.5	993.5
---				Wide sill, upper outlet	649.1	570	2 ⁶	985.5	988.5
RF 695.49-CB	88	-0+38 to	0+50	Construct refusal, south side of upper outlet	649.1	485	1	988.5	994.5
DIKE 695.1	50			Place flank protection for dike	648.8	150	1 ⁷	see note 7	
"	435	1+97 to	6+32	Reinforce US side of dike	648.8	640	1	988.3	993.3
---				Wide sill, middle outlet	648.8	540	2 ⁶	985.3	988.3
REV 695.6-CB	797	34+08 to	42+05	Construct west bank revetment, 10' crown	648.6	1220	1	988.1	993.1
"	269	42+05 to	44+74	Construct west bank revetment, 12.5' crown	648.5	855	1	988.0	997.0
---				Wide sill, lower outlet	648.5	1360	2 ⁸	985.0	988.0
REV 695.95-A	980	109+06 to	118+86	Reinforce revetment, riverside	648.5	<u>725</u>	3 ⁸	---	988.0
						Total:		<u>9440</u>	

CONSTRUCT NORTH ACCESS ROAD

1400 c.y. of grading, fill; 2@ 67 foot x 18" reinforced concrete pipe (w. flared end section inlet and outlet)

OTHER WORK ⁹

Clearing and grubbing 4.2 acres
Seeding 0.2 acre

CONSTRUCTION SCHEDULE

California Bend Restoration Project - Missouri River M. 650.2 to 648.5

October 2001

OPTION 1

RESURFACE NORTH ACCESS ROAD AND WESTSIDE TRAIL

925 c.y. rock surfacing

OPTION 2

CONSTRUCT SOUTH ACCESS ROAD

425 c.y. grading, fill
23 feet 24" reinforced concrete pipe
100 c.y. rock surfacing

NOTES

- ¹ Placement of salvaged stone as a foundation course at the inlets is a payment item, measured by volume.
- ² Removal and disposal of pilings broken-off or removed from the designated dikes and revetment is a single lump sum item. Prospective contractors should estimate this effort based on the linear feet of structure lowering, along with construction configuration shown on the structure profiles.
- ³ Stone removal is payable based on volume. These quantities are based on original construction documents and are provided to give the contractor a general idea of the amount of work to be accomplished.
- ⁴ Placement of salvaged stone, except as bedding at the inlet structures, is a lump sum item.
- ⁵ Placement of salvaged stone along Dike 695.95 is required only to the extent that stone is available from the lowering of the dike ends.
- ⁶ The sills will be excavated 3 feet below the design invert, at a minimum of 22 feet wide. The 3-foot deep sill will be filled with stone, to a width from the revetment no less than 9 feet.
- ⁷ Salvaged stone shall be placed along the toe of the west bank, for 25 feet US and 25 DS from the centerline of Dike 695.1. The stone will be placed at a reasonably uniform rate of 3 c.y. per linear foot, with the top elevation of the stone not to exceed that of the adjacent west bank.
- ⁸ Placement of salvaged stone in the sill excavation and along REV 695.95-A is required only to the extent that stone is available from the structure lowering at this outlet. All Priority 2 work would precede Priority 3. If any salvaged stone remains after all new structures are built, it shall be hauled to a stockpile area near the inlets. The specific location for the stockpile will be determined by the Contracting Officer (CO).
- ⁹ Seeding and tree planting are payable as lump-sum items (shown in the Bid Schedule). Clearing and grubbing shall be covered under All Remaining Work.
- ^{**} General: Quantities of existing materials and lump sum items listed in this schedule are calculated using the best information available to the Government, and are provided as a guide for determining the general extent of the work involved. No change in contract price should be anticipated based on accuracy of the estimated quantities. However, the CO is to be notified immediately if actual quantities differ significantly from estimated quantities.

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