

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. W912P4-04-B-0005	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 2/12/04	PAGE OF PAGES 1 OF 6
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.			

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. W81EU6-3335-5540	6. PROJECT NO. Maumee River Dredging
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7. ISSUED BY CODE	8. ADDRESS OFFER TO
Department of the Army US Army Corps of Engineers 1776 Niagara Street Buffalo, NY 14207-3199	

9. FOR INFORMATION CALL:	A. NAME Lorraine L. McMullen	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (716)879-4249
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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 SOLICITATION AND ITS RESULTANT CONTRACT ARE ISSUED UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM OF THE BUSINESS OPPORTUNITY DEVELOPMENT REFORM ACT OF 1988.

Dredging, Maumee River, Toledo, Lucas County, OH
 Solicitation No. W912P4-04-B-0005 dated 2/18/04.

Work consists of, but is not limited to, furnishing all plant, labor, materials and equipment necessary to remove and dispose of approximately 115,000 cubic yards of dredged material, other than ledge rock, from the Maumee River, in strict accordance with the plans and specifications. Dredged material will be disposed of either in the Government-furnished disposal area and/or Contractor-furnished/Government approved disposal area. NAICS Code 234990.

Estimated magnitude in terms of physical characteristics and estimated price range is between \$250,000.00 and \$500,000.00

BID SUBMITTAL REQUIREMENTS: Standard Form 1442, entitled "Solicitation, Offer and Award" Bidding Schedule Pages 00010-4 through 00010-6, the completed Section 00600 along with Bid Bonds to be considered responsive.

A credit of \$0.88/cubic yard is available if a Contractor-furnished/Government-approved disposal area is used. The Toledo-Lucas County Port Authority has a space available for use. See Bidding Schedule "B" for additional details.

** Maintenance Dredging is defined as all required dredging between the upper and lower dredging limits required to attain the authorized channel dimensions and contract depths indicated on the contract drawing(s)"

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>70</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 SEC. 00800 PARA 1 .)

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) <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 1500 (hour) local time 4/16/2004 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

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.

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
	16. REMITTANCE ADDRESS (Include only if different than Item 14)
CODE	FACILITY CODE

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

AMOUNTS

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)	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 Department of the Army US Army Corps of Engineers 1776 Niagara Street Buffalo, NY 14207-3199	27. PAYMENT WILL BE MADE BY Finance Center 5720 Integrity Drive Millington, TN 38054-5045
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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 requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.	<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 consummates 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
30C. DATE	BY
	31C. AWARD DATE

MAINTENANCE DREDGING
MAUMEE RIVER,
TOLEDO, LUCAS COUNTY, OH
W912P4-04-B-0005

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**SECTION 00010
SOLICITATION, OFFER, AND AWARD (SF 1442) AND BIDDING SCHEDULE**

**MAINTENANCE DREDGING
MAUMEE RIVER
TOLEDO, LUCAS COUNTY, OHIO**

BIDDING SCHEDULE “A”

(USE EITHER WORDS OR FIGURES, NOT BOTH)

Bid on Bidding Schedule “A” will be based upon dredging and disposal of dredged material from the Maumee River in the Government-furnished Confined Disposal Facility, as shown on the contract drawing, in accordance with these specifications.

(See Section 02481, MAINTENANCE DREDGING, Paragraph 3.3.2)

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1	Mobilization and Demobilization		LS		\$ _____
2	Maintenance Dredging: Maumee River (STA 240+00 to 350+00)	25,000	CY	\$ _____	\$ _____
3	Maintenance Dredging: Maumee River (STA 350+00 to 506+00)	90,000	CY	\$ _____	\$ _____
Total Estimated Amount (Items 1, 2 & 3)					\$ _____

NOTE: The above “estimated quantity” pay items for dredging are based upon total estimated quantity of material available within the “required pay prism” plus a portion of the available “allowable overdepth” material noted below. These subdivided quantities are approximate and do not indicate limitations in channel work areas:

<u>Item No.</u>	<u>Estimated Quantity in Required Pay Prism</u>	<u>Quantity of Allowable Overdepth Material Included</u>
2	20,000	5,000
3	70,000	20,000

**MAINTENANCE DREDGING
MAUMEE RIVER
TOLEDO, LUCAS COUNTY, OHIO**

BIDDING SCHEDULE "B"

(USE EITHER WORDS OR FIGURES, BUT NOT BOTH)

Bid on Bidding Schedule "B" will be based upon dredging and disposal of dredged material from the Maumee River in the Contractor-furnished/Government-approved Disposal Area with the balance, if any, in the Government-furnished Confined Disposal Facility, as shown on the contract drawing, in accordance with these specifications.

(See Section 02481, MAINTENANCE DREDGING, Paragraph 3.3.3)

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1	Mobilization and Demobilization		LS		\$_____
2	Maintenance Dredging: Maumee River (STA 240+00 to 350+00)	25,000	CY	\$_____	\$_____
3	Maintenance Dredging: Maumee River (STA 350+00 to 506+00)	90,000	CY	\$_____	\$_____
Total Estimated Amount (Items 1, 2 & 3)					\$_____

NOTE 1: In evaluating the bids, the Government will take into account the following additional cost item:

Reduction in cost to Government, equal to the percent of the total material to be disposed of in the Contractor-furnished disposal area (indicated on the next page, 00010-6, by the bidder)

_____ % multiplied by 115,000 cubic yards @ \$0.88/CY minus(-) \$_____

(Bidder to fill in blanks at time of bidding if he submits a bid under this schedule).

TOTAL ESTIMATED AMOUNT FOR BID EVALUATION \$_____

Material to be disposed of in the Contractor-furnished disposal area is _____% \pm 0.2% of the material to be disposed of under Item Nos. 2 and 3. (Bidder to fill in blank at time of bidding if he submits a bid under this schedule).

The Toledo-Lucas County Port Authority has a space in Cell #1, as shown on the contract drawing, available for use as a Contractor-furnished disposal area and will coordinate in obtaining the necessary permits for its use. For additional details, please contact the following:

Toledo-Lucas County Port Authority
Attn: Warren D. McCrimmon, Seaport Director
One Maritime Plaza
Toledo, Ohio 43604-1866
wmccrimmon@toledoportauthority.org
Phone: 419/243-8251
Fax: 419/243-1835

AWARD OF THE CONTRACT UNDER THIS SCHEDULE WILL BE SUBJECT TO THE ACCEPTANCE OF THE PROPOSED CONTRACTOR-FURNISHED DISPOSAL AREA OR AREA(S), BY THE CONTRACTING OFFICER. UNLESS THE DATA REQUIRED IN SECTION 00800, SPECIAL CONTRACT REQUIREMENTS, CLAUSE ENTITLED "PHYSICAL DATA", AND SECTION 02481, MAINTENANCE DREDGING, PARAGRAPHS ENTITLED "REQUIRED DOCUMENTS", "REQUIRED FORMS", AND "COORDINATION WITH AGENCIES" OF THIS SPECIFICATION IS FURNISHED WITH THE OFFER AT TIME OF BID OPENING, THE OFFER UNDER THIS SCHEDULE WILL BE CONSIDERED NON-RESPONSIVE.

NOTE 2: The above "estimated quantity" pay items for dredging are based upon total estimated quantity of material available within the "required pay prism" plus a portion of the available "allowable overdepth" material noted below. These subdivided quantities are approximate and do not indicate limitations in channel work areas:

<u>Item No.</u>	<u>Estimated Quantity in Required Pay Prism</u>	<u>Quantity of Allowable Overdepth Material Included</u>
2	20,000	5,000
3	70,000	20,000

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SECTION 00100
INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

1 BID DEPOSITORY

Hand carried bids must be deposited, prior to the time set for opening of bids, in the bid depository, Contracting Division, Building No. 1, 1st Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

2 PLACE OF BID OPENING

Bids shall be publicly opened in Conference Room "A", Building No. 1, 2nd Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

3 INQUIRIES

For information regarding this Procurement, write or call (Collect calls not accepted) Ms. Lorraine McMullen, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199 - Area Code 716 - Telephone Number 879-4249.

4 WORK PERFORMED BY CONTRACTOR

The successful bidder/offeror must furnish the Contracting Officer within five (5) days after the award, the items of work which he will perform with his own forces, the percentage of the total work this represents, and the estimated cost thereof. (See Section 00800, Special Contract Requirement entitled "Limitations on Subcontracting").

5 GOVERNMENT'S PRIVILEGE IN MAKING AWARDS

The Government further reserves the right to make award of any or all schedules of any bid/offer, unless the bidder/offeror qualifies such bid/offer by specific limitation; also to make award to the bidder/offeror whose aggregate bid/offer on any combination of bid schedules is low. For the purpose of this Solicitation, the word "item" as used in the paragraph entitled "Contract Award--Sealed Bidding--Construction," shall be considered to mean "schedule."

6. 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JULY 1996)

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

(b) *General.*

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

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

(c) *Agreement.* 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 paragraph does not apply in connection with construction or service contracts.

(End of clause)

7. 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS
(MAY 2002)

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

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

(c) *Evaluation of offers.*

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

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

(d) *Alternate offers.*

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

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

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

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

(ii) May be accepted if revised during negotiations.

(End of provision)

8. 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Chief, Contracting Division, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

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

(End of provision)

9 52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation

(1) by signing and returning the amendment,

(2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid,

(3) by letter or telegram, or

(4) by facsimile, if facsimile bids are authorized in the solicitation.

The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of Provision)

10 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 bidders:

(1) Obviously misplaced decimal points will be corrected

(2) In case of discrepancy between unit price and extended price

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

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

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

11 BIDDER'S QUALIFICATIONS FAR 9.105-1

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

12 BID MODIFICATION

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

13 COMPLETION OF BID SCHEDULES

BIDS MUST BE COMPLETE AS TO ALL THE ITEMS ON THE SCHEDULE. FAILURE TO COMPLETE ALL ITEMS ON A BID SCHEDULE WILL RENDER THE BID NON-RESPONSIVE.

14 DREDGING AND DREDGE RELATED MARINE WORK

The Contractor shall comply with the provisions of EM 385-1-1. If the Contractor is a currently accepted participant in the Dredging Contractors of America (DCA)/United States Army Corps of Engineers (USACE) Dredging Safety Management Program (DSMP), as determined by the DCA/USACE Joint Committee, and holds a current valid Certificate of Compliance for both the Contractor Program and the Dredge(s) to be used to perform the work required under this contract, the Contractor may, in lieu of the submission of an Accident Prevention Plan (APP),

- a. make available for review, upon request, the Contractor's current Safety Management System (SMS) documentation,
- b. submit to the Contracting Officer the current valid Company Certificate of Compliance for its SMS,
- c. submit the current dredge(s) Certificate of Compliance based on third party audit, and
- d. submit for review and acceptance, site-specific addenda to the SMS as specified in the solicitation.

15 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 the paragraph entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," contained in the Special Contract Requirements section of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199; Foot of East 9th Street, Cleveland, OH 44114, and Summit Street, Bay View Park, Toledo, OH 43611.

(End of Clause)
(EFARS 52.2/9108(f)(a))

16 INVOICES (TOLEDO AREA OFFICE)

Invoices shall be submitted in quadruplicate to the Area Office Point of Contact specified in the Section 00800 clause entitled "Physical Data":

17 LIST OF ATTACHMENTS

1. Preparatory Inspection Checklist
2. Initial Inspection Checklist
3. Proposed Contractor-Furnished Disposal Area
4. Contractor Quality Control Report
5. Standard Form 24, "Bid Bond" (Sample)
6. Standard Form 25, "Performance Bond" (Sample)
7. Standard Form 25-A, "Payment Bond" (Sample)
8. ENG Form 27, "Report of Operations--Hopper Dredges"
9. ENG Form 4025, "Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer's Certificates of Compliance"
10. ENG Form 4267, "Report of Operations--Pipeline, Dipper or Bucket Dredges"
11. ENG Form 4288, "Submittal Register"
12. General Decision Number IL030018
13. General Decision Number MI030018
14. Maumee River Survey Control Data (31 sheets)
15. EM 385-1-1, US Army Corps of Engineers Safety and Health Requirements Manual (November 2003)
16. Contractor Accident Prevention Plan Checklist
17. Sample Accident Prevention Plan Template
18. Environmental Protection Plan Template
19. Contractor Quality Control Plan Checklist
20. Contractor Quality Control Template
21. Sketch of Approximate Topographic Condition of Confined Disposal Facility

These attachments are located at the end of this Solicitation.

18 PRE-CONSTRUCTION CONFERENCE (FEB 1995)

After award of a contract, a Preconstruction Conference will be conducted between responsible personnel of the Contractor, Area Office and District Office to discuss Government procedures and line authority for contractual, administrative, and construction matters. The successful Contractor 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.

19 REQUIREMENT FOR BASIC ORDERING AGREEMENT

If offeror proposes to perform part or all of the work with a hopper dredge(s), failure to have an active Basic Ordering Agreement (See Special Contract Requirement entitled "CERF Implementation" in effect on the date of opening of proposals under this Solicitation, will result in the bid being rejected as not responsive.

20 SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

This solicitation and its resultant contract are issued under the Small Business Competitiveness Demonstration Program of the Business Opportunity Development Reform Act of 1988.

21 SYNOPSIS OF SUBCONTRACT OPPORTUNITIES FAR 5.206(b)

Prime contractors and subcontractors are encouraged to use the Governmentwide Point of Entry (GPE) to publicize opportunities in the field of subcontracting stemming from defense business.

Transmittal of a synopsis are accomplished in the following manner:

(a) GPE. Transmission must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(b) CBD. All synopses transmitted electronically to the CBD, other than through the GPE, must be in ASCII Code.

© Hard copy transmission. When electronic transmission if not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to the—

Commerce Business Daily
U.S. Department of Commerce
P. O. Box 77880
Washington, DC 20013-8880

22 UNBALANCED BIDS

Bids submitted, that appear to be unbalanced, may be rejected in accordance with the clause entitled "Contract Award--Sealed Bidding--Construction" of Section 00100 - Instructions, Conditions, and Notices to Bidders"

23 WAGE DETERMINATION (Construction)

(a) The Department of Labor Wage Determination Decision referred to in Section 00700 - Contract Clauses of the solicitation is attached hereto and made a part hereof, Decision No. IL030018 and MI030018, and all amendments thereto.

(b) Classifications and rates applicable to this work are those used in the local area in the performance of Dredging on the Great Lakes.

24. 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):

52.204-6	Data Universal Numbering System (DUNS) Number	JUN 1999
252.204-7001	Commercial and Government Entity (CAGE) Code Reporting	AUG 1999
252.204-7004	Required Central Contractor Registration	MAR 2000
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	DEC 1999
52.214-1	Solicitation Definitions -- Sealed Bidding	JUL 1987
52.214-3	Amendments to Invitations for Bids	DEC 1989
52.214-4	False Statements in Bids	APR 1984

52.214-5	Submission of Bids	MAR 1997
52.214-6	Explanation to Prospective Bidders	APR 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	NOV 1999
52.214-18	Preparation of Bids - Construction	APR 1984
52.214-19	Contract Award - Sealed Bidding Construction	AUG 1996
52.216-1	Type of Contract	APR 1984
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction	FEB 1999
52.223-6	Drug Free Work Place	MAY 2001
52.223-14	Toxic Chemical Release Reporting	AUG 2003
52.225-13	Restrictions on Certain Foreign Purchases	OCT 2003
52.227-1	Authorization and Consent	JULY 1995
52.227-4	Patent Indemnity - Construction Contracts	APR 1984
52.228-1	Bid Guarantee	SEP 1996
52.228-11	Pledges of Assets	FEB 1992
52.228-15	Performance and Payment Bonds -- Construction	JUL 2000
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SECTION 00600
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SECTION 00600
REPRESENTATIONS & CERTIFICATIONS

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

(a) The offeror certifies that --

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

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

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

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

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

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

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

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

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

(End of clause)

2. 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)

3. 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

4. 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

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

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

(3) "Significant interest" means --

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

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

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

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

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

(b) "Prohibition on award."

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

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

5. 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAR 2001)

(a)

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

(2) The small business size standard is \$17.02 million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on

a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

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

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

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

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

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

(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.

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

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

(ii) It / / is, / / is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(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.

6. 52.219-2 EQUAL LOW BIDS. (OCT 1995)

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

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

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

7. 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

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

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

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

No. of Employees	Avg. Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million

____ Over 1,000 ____ Over \$17 million
(End of provision)

8. 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

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

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

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

(End of provision)

9. 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)

10. 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(OCT 1996)

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

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

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

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

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

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

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

[] (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or

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

11. AFFILIATED BIDDERS

(a) Business concerns are affiliates of each other when, either directly or indirectly--

- (1) One concern controls or has the power to control the other; or
- (2) A third party controls or has the power to control both.

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

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

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

(End of provision)

12. PLANT AVAILABLE

Each bidder/offeror shall list, on the Schedule below, plant available and proposed for use on the work under this Solicitation.

PLANT AND EQUIPMENT SCHEDULE

Eng Form 1619-R

Available Plant to be Used

*

No.	Type	Capacity	Manufacturer	Age & Condition	Location

*

No.	Type	Capacity	Manufacturer	Age & Condition	Location

NOTE: *Provide separate table for each type of equipment such as excavation, pile driving, concrete plant, material handling, etc. Use separate line for each major item. Use additional pages if necessary.

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

a. Number. For dredges, give identifying number and name.

b. Type. Under this heading, give description as follows: For bucket and dipper dredges, show bucket capacity in cubic yards, horse-power of hoist engine, type of power, and number of swings per hour; for pipe line dredges, show inside diameter of discharge pipe, horse-power of pump engine and type of power.

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

13. REMIT TO ADDRESS

The bidder/offeror shall insert below the address to which all contract payments shall be mailed.

The Contractor shall notify the Contracting Officer, in writing, of any change to this address. A contract modification will be required.

In accordance with the "Prompt Payment" clause of this contract, any invoice which specifies a payment address differing from that shown above, will be returned without action.

CLAUSES INCORPORATED BY REFERENCE

52.203-11	Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions	APR 1991
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SECTION 00700
CONTRACT CLAUSES

1 252.201-7000 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)

2. 52.203-5 COVENANT AGAINST CONTINGENT FEES (Apr 1984)

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

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

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

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

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

(End of clause)

3. 52.225-9 BUY AMERICAN ACT -CONSTRUCTION MATERIALS (MAY 2002)

(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:

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				
	<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
	<i>Item 1:</i>			
	Foreign construction material	_____	_____	_____
	Domestic construction material	_____	_____	_____

Item 2:	_____	_____	_____	
Foreign construction material	_____	_____	_____	
Domestic construction material				
<p>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</p> <p>[Include other applicable supporting information.]</p> <p>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]</p>				

4. 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 1997)

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

(a) Invoice Payments.

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

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

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

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

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

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date

of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

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

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

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

(iv) Description of work or services performed.

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

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

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

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

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

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

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

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

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

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

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

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

(ii) The following periods of time will not be included in the determination of an interest penalty:

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

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

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

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

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

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

(6) Additional interest penalty.

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

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

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

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

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

- (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
- (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
- (3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

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

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except--

- (1) For additional penalties due on or before January 22, 1992, such penalties shall not exceed \$2,500;
- (2) After January 22, 1992, the additional penalty shall not exceed \$5,000;
- (3) The additional penalty shall never be less than \$25; and
- (4) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

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

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

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

(b) contract financing payments.

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

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

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

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefore must be recovered from the Government because of a reduction under subdivision (e)(5)(i) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and states that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports.

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(iii) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The contractor 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 subcontractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime -subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime -subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

5. 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

6. AUTHORIZED DEVIATIONS IN CLAUSES

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

7. 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.

8. DEFINITIONS (JUL 1989) (DEVIATION) EFARS 52.202-10001

(This clause is applicable if the contract number begins with DACW)

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

(b) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Corps of Engineers Board of Contract Appeals, Office of the Chief of Engineers, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314-1000.

9. 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.

(End of Clause)

10. FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE)

(a) As soon as practicable after the completion of the entire work or any section thereof (if the work is divided into sections) as in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. Should any shoals, lumps, or other lack of contract depth be disclosed by this examination the Contractor will be required to remove same by dragging the bottom or by dredging at the contract rate for dredging, but if the bottom is soft and the shoal areas are small and form no material obstruction to navigation, the removal of such shoal may be waived by the discretion of the Contracting Officer. The Contractor or his authorized representative will be notified when soundings and/or sweepings are to be made, and will be permitted to accompany the survey party. When the area is found to be in a satisfactory condition, it will be accepted finally. Should more than two sounding or sweeping operations by the Government over an area be necessary be reason of work for the removal of shoals disclosed at a prior sounding or sweeping, the cost of such third and any subsequent sounding or sweeping operations will be charged against the Contractor at the rate of \$1,500.00 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is enroute to or from the site or held at or near the said site for such operations.

(b) Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

(End of Clause)

11. INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Solicitation.

12. 52.244-2 SUBCONTRACTS

(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 to 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 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 modifications 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 acquisition 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 simplified acquisition 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 the 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 allowability 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 type 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 from 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 were evaluated during negotiations

(End of clause)

CLAUSES INCORPORATED BY REFERENCE

52.203-3	Gratuities	APR 1984
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price of Fee Adjustment for Illegal or Improper Activity	JAN 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 1997
52.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies	MAR 1999
52.204-4	Printing/Copying Double-Sided on Recycled Paper	AUG2000
252.204-7003	Control of Government Personnel Work Product	APR 1992
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or proposed for Debarment	JUL 1995
52.214-26	Audit and Records--Sealed Bidding	OCT 1997
52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications Sealed Bidding	OCT 1997
52.214-28	Subcontracting Cost or Pricing Data--Modifications--Sealed Bidding	OCT 1997
52.214-29	Order of Precedence--Sealed Bidding	JAN 1986
52.219-8	Utilization of Small Business Concerns	OCT 1999
52.219-16	Liquidated Damages - Subcontracting Plan	JAN 1999
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	AUG 1996
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	JUL 1995
52.222-6	Davis Bacon Act	FEB 1995
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	FEB 1988
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	FEB 1988
52.222-12	Contract Termination - Debarment	FEB 1988
52.222-13	Compliance with Davis -Bacon and Related Act Regulations	FEB 1988
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certifications of Eligibility	FEB 1988
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	FEB 1999
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	FEB 1999
52.222-36	Affirmative Action for Workers with Disabilities	JUN 1998
52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	JAN 1999
52.233-1	Disputes	DEC 1998
52.233-3	Protest After Award	AUG 1996
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984

52.236-13	Accident Prevention	NOV 1991
52.236-21	Specifications and Drawings for Construction	FEB 1997
252.236-7000	Modification Proposals - Price Breakdown	DEC 1991
52.242-13	Bankruptcy	JUL 1995
52.242-14	Suspension of Work	APR 1984
52.243-4	Changes	AUG 1987
252.243-7001	Pricing of Contract Modifications	DEC 1991
52.246-12	Inspection of Construction	AUG 1996
52.248-3 Alt I	Value Engineering - Construction (FEB 2000) - Alternate I	APR 1989
52.249-2 Alt I	Termination for Convenience of the Government (Fixed Price) Alt I	SEP 1996
52.249-10	Default (Fixed-Price Construction)	APR 1984
52.253-1	Computer Generated Forms	JAN 1991

SECTION 00800
SPECIAL CONTRACT REQUIREMENTS

- 1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK
- 2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)
- 3 52.236-4 PHYSICAL DATA (APR 1984)
- 4 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS
- 5 52.219-14 LIMITATIONS ON SUBCONTRACTINGS (DEC 1996)
- 6 52.236-16 QUANTITY SURVEYS (APR 1984)
- 7 QUANTITY SURVEY SCHEDULING
- 8 252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)
- 9 252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)
- 10 ACCOMMODATIONS FOR INSPECTORS
- 11 CERF IMPLEMENTATION (1983 JUN OCE)
- 12 CONTINUITY OF WORK (1965 APR OCE)
- 13 CONTRACTOR SUBMITTAL PROCEDURES ER 415-1-10
- 14 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
- 15 LAYOUT OF WORK (1965 APR OCE)
- 16 MARKING AND LIGHTING OF EQUIPMENT
- 17 REAL ESTATE
- 18 REPORT OF DREDGING OPERATIONS

- 19 SAFETY REQUIREMENTS
- 20 SHOALING (1965 APR OCE)
- 21 SIGNAL LIGHTS
- 22 VARIATIONS IN ESTIMATED QUANTITIES--DREDGING (1985 JAN HQ USACE)
- 23 VESSEL EMBARKING/DISEMBARKING SAFETY
- 24 WITHDRAWAL OF CONTRACTOR'S PLANT FROM CONTRACT WORK

The Contractor shall consult the most recent Federal Register for more specific information and additional marine events. All dredging/transport and/or disposal work should be scheduled accordingly.

(e) Bridge Operation. The Contractor shall be advised that there are several bridges crossing the Maumee River upstream of the Government-furnished Confined Disposal Facility. For the duration of this contract, the Contractor will be prohibited from requesting the movable highway bridges to open during the hours of 0700 to 0900 and also 1615 to 1745, Monday through Friday.

(f) The Contractor shall submit a complete schedule of work covering the period of time from the Notice of Award through the specified duration of the contract, including all private and Government work, and the plant intended for each project, to the Contracting Officer within ten (10) calendar days of receipt of the Notice of Award.

2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$600.00 for each day of delay.

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

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

(End of clause)

3 52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by surveys and soundings.

(b) Weather Conditions. N/A.

(c) Transportation Facilities. The location is served by railroads and major highways. The Contractor shall investigate and obtain the necessary information and data regarding the availability and use of access roads, dock facilities, highways and railroad facilities to the site of the work. The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary permits to operate on or cross public highways and roads and railroads in connection with the prosecution of the contract work. See the Contract Clause (Section 00700) entitled "Permits and Responsibilities".

(d) Project Condition Soundings. Government sounding drawings from the previous year are included as reference drawings and are listed in the paragraph entitled "Contract Drawings, Maps and Specifications" of this section.

(e) Lake Levels. Data and forecasts are available through the publication, "Monthly Bulletin of Lake Levels" by the Department of the Army, Detroit District, Corps of Engineers, ATTN: CELRE-EP-HW, P.O. Box 1027, Detroit, MI 48231-1027.

(f) Harbor, River and Channel Traffic. There is a heavy amount of traffic in the harbor and river consisting of fishing boats, commercial vessels, and recreational boats. The Contractor, in planning the schedule of operations, must not impede the traffic of incoming and outgoing vessels.

(g) Channel Crossing Items. There are pipe, cable, or other type utility crossings within the limits of the Federal Projects. These crossings are particularly numerous in the areas of bridge crossings. The Contractor shall confer with the owners of the crossings regarding their exact locations and exact elevations and will be held responsible for any damages done to them by the dredging operations.

(h) Local Conditions. The work areas inside the harbor are considered sheltered, although they may be subject to wave action from the north and east. Work areas in the lake approach channel are subject to lake storms from all quarters. Up-to-date Federal and City regulations governing the use, navigation and administration of the harbor and river are published in the latest issue of the "United States Coast Pilot 6", by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

(i) Condition of Channels. The channels are periodically dredged totally, or in part, depending upon sediment build-up over the year. Project condition sounding drawings showing the depths prior to maintenance dredging in previous years are available for inspection in the Survey Branch, Department of the Army, US Army Engineer District, Buffalo, Building No. 2, 1776 Niagara Street, Buffalo, NY 14207-3199, (716) 879-4285, and may be inspected by the bidders between the hours of 8:00 AM and 4:00 PM, Monday through Friday. Previous year drawings are to be considered for information only, and should not be considered representative of current conditions.

(j) Airport Traffic. N/A

(k) Acceptance Section Lengths. Refer to Section 02481, "Maintenance Dredging".

(l) Datums and Benchmarks. The plane of reference of low water datum as used in these specifications is that determined by the following bench marks:

(1) P 182 (1954), In Toledo, at the intersection of the Conrail Railroad and Main Street, set vertically in the northeast face of the southwest concrete abutment of the railroad overpass of the street, 29.5 feet southwest of the centerline of the eastbound lanes of the street, 17.7 feet northwest of the center of the track, 2.0 feet above the ground surface, and 1.6 feet south-southeast of the northwest end of the abutment. Elevation: 585.699 ft.

(2) M 182 (1954), In Toledo at the intersection of Summit Street and Interstate Highway 280, in top of and 1.0 feet north of the south corner of the most northeasterly of 2 concrete piers of the Summit Street off ramp, 126.3 feet northeast of the center of the northbound highway overpass of the street and the Conrail Railroad, 81.0 feet south of the Bench Mark Craig, 77.8 feet southeast of the centerline of the eastbound lanes of the street, 28.2 feet northwest of the near rail, 4.9 feet below the level of the street, and 2.0 feet above the ground surface. Elevation: 585.689 ft.

(3) LAKE SHORE EAST (UNK), In Toledo, at the intersection of the Conrail Railroad and Miami Street, in the top of and 2.3 feet east of the west end of the south stone retaining wall of a railroad bridge spanning the Maumee River, 177.2 feet west of the center of the street, 9.2 feet south of the near rail, 5.9 feet east of the Bench Mark S 18, and 1.0 feet below the level of the track. Elevation: 591.493 ft.

(4) N 182 (1954), In Toledo, at the intersection of Miami and Stratton Streets, set vertically in the east face of the most northerly of 2 concrete columns of the first pier west of Miami Street of the Anthony Wayne Bridge spanning the Maumee River, 134.8 feet north of the extended center of Stratton Street, 15.4 feet west of the centerline of Miami Street, 4.9 feet south of the northeast corner of the column, and 2.3 feet above the ground surface. Elevation: 609.380 ft.

(5) Q 182 (1954), In Toledo, set vertically in the northwest face of the two Maritime Plaza Buildings at 710 Water Street, 72.5 feet southeast of the center of the street, 28.5 feet northeast of the northeast face of the main entrance to the buildings, 3.6 feet above the ground surface, and 1.0 feet southwest of the north corner of the buildings. Elevation: 582.999 ft.

(6) 1206 (UNK), In Toledo, at the intersection of Summit and Ohio Streets, in top of and 0.7 feet northeast of the southwest end of the bottom step of the entrance to the Ohio Blenders Company Office, 62.3 feet northeast of the center of Ohio Street, 41.0 feet southeast of the centerline of the east bound lanes of Summit Street, 5.9 feet west of the center of the entrance door to the building, 3.6 feet northwest of the northwest face of the building, and 0.7 feet above the level of the sidewalk. Elevation: 594.445 ft.

(7) SUDER (UNK), In Toledo, in top of and 6.2 feet southwest of the northeast end of the concrete retaining wall of the basement steps of the Koil Komfort Mattress Company at 3444 Summit Street, 55.4 feet southwest of the extended centerline of Suder Avenue, 39.4 feet northeast of the center of the entrance to the building, 37.7 feet southeast of the centerline of the eastbound lanes of the street, 4.6 feet northwest of the northwest face of the building, and 1.0 feet above the level of the street. Elevation: 588.793 ft.

The plane of low water datum is 569.2 feet above mean level at Rimouski, Quebec (IGLD-1985) (International Great Lakes Datum 1985).

(m) Area Office Point of Contact. Submittals shall be transmitted to the following:

Mr. Arnold Page
Department of the Army
U.S. Army Engineer District, Buffalo
Toledo Project Office
3900 Summit Street
Toledo, OH 43611
(419) 726-9014 - Tel.
(419) 259-7436 - Fax

(n) Notifications. The Contractor shall notify the Shore Maintenance Detachment, Ninth Coast Guard district, 1240 E. Ninth Street, Cleveland, OH 44199-2060, phone (216) 522-7601, at least two (2) weeks prior to commencement of dredging, concerning the presence of Coast Guard-owned cables and the necessary action and coordination to prevent cable damage.

Environmental Notification. The Contractor shall notify the Ohio Environmental Protection Agency, both the Section 401 Coordinator (P.O. Box 1049, 1800 Watermark Drive, Columbus, OH 43266-0149, Phone: (614) 644-3020), and the Northwest District Office (1035 Devleckgrove Drive, Bowling Green, OH 43402, Phone: (419) 352-8461), at least three (3) days prior to commencement of dredging, concerning the initiation of dredging operations.

(o) Order of Work. N/A

(p) Capacity of Disposal Area. The Government-furnished disposal area has sufficient capacity to accept the estimated quantity of dredged material in this contract based on analysis of data in the latest disposal area survey.

(q) Confined Disposal Facility (CDF) Information. The CDF is shown on the contract drawing and does have a pumpout facility available for use by the Contractor, however the pipeline has been abandoned and currently is in a state of disrepair. The Contractor shall be responsible for providing all necessary pipe and/or means needed to ensure that the dredged material is discharged in the location indicated on the contract drawing. For information only, a sketch of the approximate topographic condition of the CDF is included as an attachment to this solicitation.

(r) Open-Lake Disposal Area Information. N/A

(s) Nearshore Disposal Area Information. N/A

(t) Contractor-furnished Disposal Area Agency Coordination. The Contractor shall coordinate on the use of the proposed Contractor-furnished disposal area(s) with the following agencies and shall submit with his bid, written approval of these agencies for the use of the Disposal areas:

Regional Administrator
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604
(312) 353-2000

District Commander
Attention: CELRB-CO-EO
U.S. Army Engineer District
1776 Niagara Street
Buffalo, New York 14207-3199
(716) 879-4329

Director
Ohio Environmental Protection Agency
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43216-1049
(614) 644-2135

Director
Ohio Department of Natural Resources
Fountain Square
Columbus, Ohio 43224
(614) 265-6415

State Historic Preservation Officer
 Ohio Historical Society
 Ohio Historic Preservation Office
 1985 Velma Avenue
 Columbus, Ohio 43211
 (614) 297-2470

Field Supervisor
 Columbus Field Office
 U.S. Fish & Wildlife
 Division of Ecological Services
 3950-H Americana Parkway
 Reynoldsburg, Ohio 43068
 (614) 469-6923

The Toledo-Lucas County Port Authority has a space in Cell #1, as shown on the contract drawing, available for use as a Contractor-furnished disposal area and will coordinate in obtaining the necessary permits for its use. For additional details, please contact the following:

Toledo-Lucas County Port Authority
 Attn: Warren D. McCrimmon, Seaport Director
 One Maritime Plaza
 Toledo, Ohio 43604-1866
 wmccrimmon@toledoportauthority.org
 Phone: 419/243-8251
 Fax: 419/243-1835

(u) Restrictions. N/A

4 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS

(a) The CD-Rom disc furnished by the Government for solicitation of bids includes an electronic copy of the contract drawings, maps and specifications without charge except applicable publications incorporated into the specifications by reference. Large scale paper or mylar copies of the plans and paper copies of the specifications may be produced at the Contractor's expense from the CD-Rom. The work shall conform to the following contract drawings and maps, all of which form a part of the contractual documents.

Title	File	Drawing No.
CONTRACT DRAWINGS:		
Toledo Harbor, Toledo, OH Maumee River Maintenance Dredging FY 2004 General Plan	1/1	04-TOL-2/1

REFERENCE DRAWINGS:

03S-TOL-1/1	Project Condition Soundings - May, July 2003
03S-TOL-1/2	Project Condition Soundings - July, November 2003
03S-TOL-1/3	Project Condition Soundings - November 2003
03S-TOL-1/4	Project Condition Soundings - April, November 2003
03S-TOL-1/5	Project Condition Soundings - April 2003
03S-TOL-1/6	Project Condition Soundings - April 2003

03S-TOL-1/7	Project Condition Soundings - April, May, June 2003
03S-TOL-1/8	Project Condition Soundings - June, December 2003
03S-TOL-1/9	Project Condition Soundings - December 2003
03S-TOL-2/6	“Before” Dredging Soundings - August 2003
03S-TOL-2/7	“Before” Dredging Soundings - August, September 2003
03S-TOL-2/8	“Before” Dredging Soundings - June 2003
03S-TOL-3/6	“After” Dredging Soundings - October 2003
03S-TOL-3/7	“After” Dredging Soundings - October, September 2003
03S-TOL-3/8	“After” Dredging Soundings - August 2003

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

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

5 52.219-14 LIMITATIONS ON SUBCONTRACTINGS (DEC 1996)

(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.

(End of clause)

6 52.236-16 QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

7 QUANTITY SURVEY SCHEDULING

The Government will perform the "before" contract dredging survey(s) to determine the work required, during the fourteen (14) calendar day period prior to the start of dredging operations. The Contractor shall notify the Contracting Officer, in writing, within ten (10) calendar days after award of the contract, the date on which he proposes to begin the contract dredging. Any changes to the proposed start date must be made before the start of the fourteen (14) day period. The Contractor shall be responsible for the cost of all additional surveys performed as a result of the Contractor's failure to meet the proposed start date. Additional surveys may be performed if deemed beneficial to the Government by the Contracting Officer, or at the request of the Contractor. The cost of additional surveys will be reimbursed by the Contractor, to the Government at a rate of \$1,760.00 per day. The Government shall schedule the additional surveys as soon as possible, taking into consideration the Government resources and other commitments for similar work. No time extensions shall be granted or costs or damages allowed to the Contractor for any delays resulting from the taking of a second or subsequent "before" dredging survey(s).

8 252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the Contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

accommodations for inspectors, and all costs associated therewith shall be included in the payment item(s) shown in Section 00010, "SOLICITATION, OFFER AND AWARD (SF 1442) AND BIDDING SCHEDULE". If the Contractor fails to meet these requirements, the facilities referred to above will be secured by the Contracting Officer, and the cost thereof will be deducted from payments to the Contractor.

11

CERF IMPLEMENTATION (1983 JUN OCE)

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

(a) The Director of Civil Works may require the Contractor to perform emergency dredging at another CONUS (48 contiguous states) site for a period of time equal to the remaining time under this contract at the date of notification plus up to ninety (90) days at the previously negotiated rate which appears on the schedule of prices in the BOA.

(b) The Chief of Engineers may require the Contractor to perform emergency dredging at an OCONUS (Outside CONUS which includes Alaska, Hawaii, Puerto Rico, the Virgin Islands, or U.S. Trust Territories) site for a period of time equal to the time remaining under this contract at the date of notification plus up to one hundred eighty (180) days at the negotiated rate which appears on the schedule of prices in the BOA.

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

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

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

(End of Clause)
(EFARS 52.2/9112)

12

CONTINUITY OF WORK (1965 APR OCE)

No payment will be made for work done in any area designated by the Contracting Officer until the full depth required under the contract is secured in the whole of such area, unless prevented by ledge rock, nor will payment be made for excavation in any area not adjacent to and in prolongation of areas where full depth has been secured except by decision of the Contracting Officer. Should any such nonadjacent area be excavated to full depth during the operations carried on under the contract, payment for all work therein may be deferred until the required depth has been made in the area intervening. The Contractor may be required to suspend dredging at any time when for any reason the gages or ranges cannot be seen or properly followed.

(End of Clause)
(EFARS 52.2/9110(c))

13

CONTRACTOR SUBMITTAL PROCEDURES ER 415-1-10

Within ten (10) days after receipt of notice to proceed, the Contractor shall complete and submit to the Contracting Officer, in duplicate, submittal register ENG Form 4288 listing all submittals and dates. In addition to those items listed on ENG Form 4288, the Contractor will furnish submittals for any deviation from the plans and specifications. The scheduled need dates must be recorded on the document for each item for control purposes. In preparing the document, adequate time (minimum of 30 days) will be allowed for review and approval and possible resubmittal. Scheduling shall be coordinated with the approved progress schedule. The Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. Copies of updated or corrected listing shall be submitted to the Contracting Officer at least every 60 days in the quantity specified. Payment will not be made for any material or equipment which does not comply with contract requirements.

(a) A copy of ENG Form 4288 entitled "SUBMITTAL REGISTER" is listed as an attachment in Section 00100. The form has been completed to show those technical items the Contractor shall submit to the Contracting Officer, as indicated in the contract requirements. The Contractor may reproduce this form for its use. The furnished listing shall not relieve the Contractor of its obligation to comply with the specifications for items not on the listing.

(b) TRANSMITTAL OF SUBMITTALS. All items which are to be submitted to the Contracting Officer for approval shall be transmitted with ENG Form 4025, entitled "Transmittal of Shop Drawings, Equipment Data, Material Sample, or Manufacturer's Certificates of Compliance", and is listed as an attachment in Section 00100.

14

EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

(a) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating

Expense Schedule,” Region II. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.

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

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

(EFARS 31.105(d)(2)(i)(A))

15

LAYOUT OF WORK (1965 APR OCE)

(a) The Government has established bench marks and horizontal control points at the site of the work. These are described and indicated on contract drawings.

(b) From these control points the contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the contract drawings. The Contractor shall establish and maintain at the site of the work the following horizontal and vertical controls:

See Section 02481, "MAINTENANCE DREDGING," Paragraph "Layout of Work".
See Section 00800, "SPECIAL CONTRACT REQUIREMENTS," Clause "Physical Data",
Paragraph "Datums and Benchmarks".

The above are minimum requirements and the contractor shall place and establish such additional stakes and markers as may be necessary for control and guidance of his construction operations. All survey data shall be recorded in accordance with standard and approved methods. All field notes, sketches, recordings and computations made by the Contractor in establishing above horizontal and vertical control points shall be available at all times during the progress of the work for ready examination by the contracting officer or his duly authorized representative.

(c) The contractor shall furnish, at his own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work from the control points established by the Government. It shall be the responsibility of the contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If any of the control points established at the site by the Government are destroyed by or through the negligence of the Contractor prior to their authorized removal, they may be replaced by the

Contracting Officer, and the expense of replacement will be deducted from any amount due or which may become due the Contractor. The Contracting Officer may require that work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper replacement of the control points.

(End of Clause)
(EFARS 52.2/9108(a)(b))

16 MARKING AND LIGHTING OF EQUIPMENT

(a) When not in use, all booms and similar unusually high equipment shall be lowered to below the equipment's fixed highest point. Tips of booms shall also be marked by a red light continuously lit day and night.

(b) Top 15 feet of booms shall be painted with fluorescent orange Federal Standard 595A, color 38903 or equal.

(c) All Contractor work vehicles shall be identified by company name.

17 REAL ESTATE

No real estate rights have been obtained by the Government for this project. If any real estate rights are desired by the Contractor in addition to that already available to the Government for access to the disposal facility and/or project area, they shall be obtained by the Contractor at his own expense. Copies of any such agreements shall be furnished to the Contracting Officer for approval before entering thereon. Such agreements shall clearly relieve the Government of any responsibility for damages resulting from the use of such grounds.

18 REPORT OF DREDGING OPERATIONS

As set forth in Section 00700, "Contract Clauses", paragraph entitled "Inspection of Construction," which requires the maintenance of inspection records, either ENG Form 4267 (Report of Operations - Pipeline, Dipper or Bucket Dredges) or ENG Form 27 (Report of Operations - Hopper Dredges), as appropriate to the type of work being performed, shall be completed daily. The Contractor shall furnish the completed forms, to the Contracting Officer. Blank copies of both forms are located at the end of this Solicitation. An adequate supply will be provided to the Contractor by the Contracting Officer. If the Contractor proposes to use any other form, it shall be approved by the Contracting Officer prior to use.

19 SAFETY REQUIREMENTS

(a) General. Contract Clause entitled "Accident Prevention" of this contract requires compliance with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1 dated 03 November 2003 entitled "Safety and Health Requirements Manual." Engineer Manual EM 385-1-1 can be accessed at <http://www.lrb.usace.army.mil/contracting/SafetyManual/SafetyManual.html>. The

Contractor will be required to comply with OSHA standards and acquaint himself with any changes to those standards and the Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1).

(b) Accident Prevention Plan. The Contractor's Accident Prevention Plan format shall be in accordance with Appendix A of the "Safety and Health Requirements Manual", EM 385-1-1. A sample Accident Prevention Plan template is included as an attachment to this solicitation. Additionally, the Contractor shall complete the Accident Prevention Plan Checklist included as an attachment to this solicitation.

(c) Activity Hazard Analysis. The "Accident Prevention Plan" required by EM 385-1-1 shall include, as a separate attachment, a detailed Activity Hazard Analysis of each phase of work. This analysis shall list all anticipated hazards and specific actions to be taken by the Contractor to prevent injury to personnel or property damage from such hazards. For projects involving major phases of work in successive stages, separate analysis shall be submitted for each such phase immediately prior to commencement of that phase. The analysis for the first phase or in the case of smaller projects, the analysis for the entire project shall be submitted with the "Accident Prevention Plan" required by Contract Clauses prior to the preconstruction conference. The Contractor's submittals will be reviewed for acceptance by designated Government personnel prior to the start of any work under this contract.

20 SHOALING (1965 APR OCE)

If, before the contract is completed, shoaling occurs in any section previously accepted, including shoaling in the finished channel, because of the natural lowering of the side slopes, redredging at contract price, within the limit of available funds, may be done if agreeable to both the Contractor and the Contracting Officer.

(End of Clause)
(EFARS 52.2/9110(f))

21 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 approved by the Commandant, U.S. Coast Guard (33 C.F.R. 80.18-80.31a and 33 C.F.R. 95.51-95-70).

22 VARIATIONS IN ESTIMATED QUANTITIES--DREDGING (1985 JAN HQ USACE)

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

(115%) or below eighty-five percent (85%) of the estimated quantity within the required dredging prism. Any equitable adjustment in the contract unit price will also apply to that part of the actual quantity of allowable overdepth material above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity.

(End of Clause)
(EFARS 52.2/9110(i))

23

VESSEL EMBARKING/DISEMBARKING SAFETY

When a hopper dredge is used in the performance of the work, embarking and/or disembarking of the dredge vessel shall be made only after the dredge vessel has safely "checked-down" and the launch craft is safely alongside, and at the same speed and direction as the dredge vessel. Embarking and/or disembarking shall only take place under the direction of the launch craft operator.

24

WITHDRAWAL OF CONTRACTOR'S PLANT FROM CONTRACT WORK

(a) At least ten (10) days before commencing work under this contract, the Contractor shall submit to the Contracting Officer in writing, a list indicating the location of all dredging work not covered by this contract, if any, he desires to perform during the first calendar month of this contract with the dredging plant assigned to this contract. The request submitted to the Contracting Officer for approval of work not covered by this contract shall indicate the estimated number of work days, including probable delays that the Contractor desires to withdraw from contract operations for work not covered by this contract. The proposed work not covered by this contract shall be located only adjacent to the work under this contract.

(b) The Contractor shall periodically submit similar requests as may be necessary throughout the duration of the contract, each letter to cover a period no greater than one calendar month. Each letter shall be submitted at least ten (10) days in advance of the period covered by the letter.

(c) The Contracting Officer, after ascertaining the overall needs of navigation and the needs of those seeking dredging not covered by this contract from such sources as may be available, and after determining that the Contractor has maintained a satisfactory rate of progress, shall determine the maximum number of work days that the Contractor may withdraw his plant for dredging not covered by this contract during the period covered by such request.

(d) The date and duration of each individual withdrawal and the number of days and total time during which the plant may be withdrawn from the contract under each such approval, shall be controlled by the Contracting Officer or his designated agent in a manner which, in his opinion, best serves the interests of navigation.

(e) The Contractor shall be assessed liquidated damages for each day plant assigned to this contract is withdrawn to perform dredging not covered by this contract without the approval of the Contracting Officer.