



**USFC2008-5059-01**

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# **APPELLANT'S BRIEF**

2008-5059

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**United States Court of Appeals**  
*for the*  
**Federal Circuit**

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WILLIAM D. HOOKER  
(doing business as Georgia Bowhunters Supply),

*Plaintiff-Appellant,*

v.

UNITED STATES,

*Defendant-Appellee.*

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

**MAY 20 2008**

JAN HORBALY  
CLERK

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*Appeal from the United States Court of Federal Claims in 03-CV-  
1501, Senior Judge Robert H. Hodges, Jr.*

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**BRIEF AND APPENDIX FOR PLAINTIFF-  
APPELLANT**

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MAY 20, 2008

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

WILLIAM D. HOOKER d/b/a GEORGIA BOWHUNTERS SUPPLY

v. UNITED STATES

No. 2008-5059

**CERTIFICATE OF INTEREST**

Counsel for the Appellant certifies the following:

1. The full name of every party or amicus represented by me is:

**William D. Hooker**

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

**N/A**

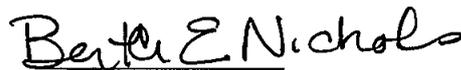
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: **N/A**

4. X There is no such corporation as listed in paragraph 3.

5. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

**Berta E. Nichols**

May 20, 2008

  
Berta E. Nichols

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This Appellant's brief is presented on behalf of Appellant William D. Hooker, d/b/a Georgia Bowhunters Supply.

### **STATEMENT OF RELATED CASES**

No other appeal in or from the same civil action or proceeding in the lower court was previously before this or any other appellate court. No case is known to be pending in this or any other court that will directly affect or be directly affected by this court's decision in this appeal.

### **JURISDICTIONAL STATEMENT**

This is an appeal from a final decision of the United States Court of Federal Claims rendered in open court on September 13, 2007, the Honorable Robert H. Hodges, Jr., Senior Judge, presiding, and from that court's Order of November 28, 2007, effectuating the same. Notice of Appeal was filed in the trial court on January 25, 2008, and docketed March 25, 2008. The judgment appealed from granted a motion brought pursuant to RCFC52(c) by the United States, to dismiss the Appellant's claims for breach of contract, bad faith breach of contract, and reformation.

Jurisdiction is vested in this Court by the provisions of 28 U.S.C. § 1295(a)(3), which, in pertinent part, directs: The United States Court of

Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from a final decision of the United States Court of Federal Claims.

The within matter is a direct appeal from a final judgment of the United States Court of Federal Claims dated November 28, 2007. Jurisdiction in the United States Court of Federal Claims was founded upon the Contract Disputes Act, 41 U.S.C. §609(a) The Court of Federal Claims has jurisdiction over claims based on any express or implied contract pursuant to 28 U.S.C. §1491(a)(2).

### **STATEMENT OF THE ISSUES**

- A. The trial court's finding that Hooker abandoned the hog contract in November, 1999 is clearly erroneous and demonstrates a misapprehension of the evidence.
- B. The trial court's finding that the Government did not breach its duties under the beaver contract is clearly erroneous and demonstrates a misapprehension of the evidence.
- C. The trial court did not address Hooker's claim for reformation and stated there was no remedy available.
- D. The trial court failed to address whether the Government acted in bad faith when it had requirements for beaver trapping yet failed to provide work orders to Hooker.

## STATEMENT OF THE CASE

The case below (03-1501C) was commenced by the Appellant, William D. Hooker, who claimed breach of two contracts by the U. S. Forest Service. The first contract was for hog control on the Savannah River Site. Mr. Hooker claims that a modification to this contract extended the contract until a new contract was awarded, yet he was prevented from performance. He claims damages for the balance of the contract. The second contract was for beaver trapping and culvert cleaning. Hooker claims that the contract should have been reformed to reflect what he would have bid had he known he would be working in contamination. When he requested additional money, the contract was shut down and he claims bad faith breach by the government. The case was assigned to Judge Francis M. Allegra. After hearing on a motion to dismiss by the government, the initial complaint was dismissed and Hooker was given leave to refile the original complaint and amend the second complaint. A second hearing on a motion to dismiss was held in 2005 and the motion was denied. After discovery was completed, the parties thereupon filed cross motions for summary judgment and these were heard on April 17, 2007 . Both motions were denied and the case was set for trial. One month prior to the trial date, August 9, 2007, the matter was reassigned to Senior Judge Robert H. Hodges. Appellant's case was tried to

the court on September 12 and 13, 2007 in Aiken, South Carolina. Before the Appellant rested his case, the court invited the government to move pursuant to CFC52(c). Motion was made and the court granted the motion to dismiss. It is from this final ruling and the order giving it effect that this appeal is taken.

### **STATEMENT OF FACTS**

On October 29, 1997 William D. Hooker (“Hooker”) was awarded Contract No. 53-4660-8-04 (“the hog contract”) with the U. S. Forest Service to control the wild hog population on the Savannah River Site near Aiken, South Carolina. The Savannah River Site is a large government research area located in Aiken, Barnwell, and Allendale Counties, South Carolina. The Department of Energy has an interagency agreement with the Forest Service to oversee the natural resources at the Savannah River Site, including timber and wildlife management. The Department of Energy is responsible for the operation and maintenance of the site, including waste management and environmental remediation activities. The whole site is a CERCLA or Superfund site.

The hog contract was an indefinite quantity contract, guaranteeing a minimum of 200 hogs and a maximum quantity of 800 hogs, at a unit price of \$55.00 per hog . A26 Modification No. 1 to the hog contract increased

the maximum quantity to 1000.A27 The hog contract was then extended for the option year, or until September 30, 1999. A28 Modification No. 4 to the hog contract was dated September 4-7, 1999. It extended the hog contract until October 31, 1999 or until a new contract is awarded.A29 Hooker continued to trap hogs under the extension until the end of November, 1999 . Hooker was was required by the contracting officer, Homer Gabard, to turn in his equipment and submit a final invoice in January, 2000. A42,43 Gabard testified at trial that this prevented Hooker's performance under the contract extension. A41 During this time, the Forest Service had issued a solicitation for bids for a follow-on hog contract. Hooker submitted a bid, which he was asked to extend for several months. A42,43 Gabard testified that a decision was made by the Forest Service to perform this work "in house" but he was not sure this was communicated to the bidders. Gabard testified "I don't think they were able to find anything in the contract file, so I may have --- the offers were, I think, due to expire shortly within that time frame --"A52 During that two year period, there was no contract. A53 A new hog contract was not awarded until November, 2001 and the hog trapping was done "in house" in the interim.

On January 22, 1999, Hooker was awarded Contract #53-4660-9-06 to trap beaver on the Savannah River Site. A30 This contract was a

requirements contract with two option years. The general specifications for the beaver contract stated that no toxicological hazards are associated with trapping beaver at SRS; however, normal environment and physical hazards such as snakes and uncertain footing do exist. A34,35 Hooker was directed to trap in beaver sites 1 through 53 on the SRS, as directed by the contracting officer's representative, Frankie Brooks. A48 She issued work orders for every site that was to be trapped. Some orders were verbal. A48,49 The beaver contract did not require any radiological protection. A45 The beaver contract did not require any of the trappers to be RAD II trained. A45 In February, 1999, Hooker was presented with a work clearance permit to enter Four Mile Creek near Road Four to trap beavers. The permit required monitoring by Rad-Con Ops and protective gear. This was beaver trapping site #53. A36,37 It was posted that day as an SCA (soil contamination area) A69 Hooker testified that it had not been posted previously. A69 This was one of four beaver trapping sites on Four Mile Creek. A46 Hooker testified that he was never told what was in the water that generated the work clearance permit. A67 Hooker also testified that in setting beaver traps, he and his workers had their hands in sediment and disturbed the soil. A68 Greg Tunno, the Health Physics Services Manager for the Washington Group International, Washington Savannah River

Company, testified that he was responsible for, among other things, insuring worker protection. A61 Tunno was not aware that there were beaver trapping areas in the Four Mile Branch. A62 He testified that it was an active environmental restoration project, where there is heavy equipment and there could be digging up soils and digging up rocks. A62 So “we did have personal protective equipment, such as latex gloves, during this environmental restoration project.” Tunno testified that the exposure routes would be by direct exposure from radioactive material in the soil, direct radiation exposure. “You can get it by inhalation, and you can get it by ingestion. That is the pathways that get into the body.” He also testified that a pathway would be a wound or cut. A63 Tunno testified that the contaminants were “Tritium, Cesium-137, Gross alpha, and non-volatile beta.” A63 Tunno further read into the record a statement that “Workers may be exposed to the hazards described in Section 2.0 while performing the following tasks: One, prepare access to sample locations by cutting brush above the ground surface. Two, locate and flag specific sample locations using hand held field detection equipment. Three, perform in-situ measurements of soils and sediments for radiological contaminants using hand held equipment that is held over the ground surface, but does not require disturbing the ground held equipment that is held over the ground

surface, but does not require disturbing the ground surface. Four, collect soil and sediment “grab” samples using hand augur or a hand scoop. Five, collect surface water “grab” samples using a hand scoop. Six, process samples in an on-site radiological laboratory. Seven, package samples for shipment, and eight, decontaminate equipment.” A65 When asked whether, based on the above, gloves were required to do all of this, Tunno said “yes, that is what it sounds like what it used to be”. A65 When asked whether there was any protection required for beaver trappers, Tunno replied; “not that I am aware of.” A65

Hooker requested more money for trapping in the contaminated areas. A70 He testified that he went to Frankie Brooks, the COR, three times and requested monies and “she told me to go see Homer Gabard, and I went to Homer, and Homer said it was per contract that we worked, and I went back to Frankie, and Frankie said if I didn’t do the work ,then I would have to default the contract.” A70 Gabard confirmed in his testimony that “he (Hooker) was told by both myself and the COR that he did not have to go into those areas if he did not want to, that if he considered the work to be outside the scope of the contract that he could refuse to do it.” A46 When asked how Hooker could trap the beaver in that case, Gabard stated that “ we would do the work with someone else if he did not want to do it.” A46

Frankie Brooks testified that “[Hooker] said he didn’t bid the job to do Rad-Con work”. A56

Hooker trapped 43 beavers in June, 1999.A71 Hooker testified that on the first of June , he hired someone to videotape the posted signs in HP-52, a beaver trapping site and that is the same time he asked for more money. A75 Asked why he was asking for more money for the beaver trapping, Hooker replied that he had been an estimator for Westinghouse (Washington). A76 He further testified that he had done estimating in plants, “and if it was clean work, then you did it just like you would an outside job. But if you were stepping inside and into radiation areas, you automatically estimated it at five times.” A77 When asked if he would have bid five times the amount on a job, he responded “at a minimum”. A77 The price per beaver at that time was \$45.00 per beaver. A33 When asked on cross-examination if he was seeking money for all the sites, Hooker replied; “well , water flows downhill. I mean, you can’t trap at HP-52 and then you have got eight other trapping sites below that trapping site. I mean, it just doesn’t stop right there.” A78 Hooker was given no work orders in July, 1999 and no beavers were trapped. A73 He was given one or two sites in August, 1999 A73 Hooker testified that the reason he was given no work orders was that he had asked what was in the water at

Four Mile Creek and in HP-52. A72 When asked if he had an opportunity to observe the beaver trapping sites during July, August, September, and October, Hooker stated that he was still hog trapping and would observe the “beaver building dams, stopping up culverts, and there was flood and timber damage.” A74 John A. Cromer worked with Hooker and continued to hunt hogs with him in the last half of 1999. A79 He testified that there was still beaver activity during that time. He testified that the water level was not low. Cromer also testified that the majority of the beaver sites are spring fed and ...from the outfall and from the plant. A79 Hooker was given one trapping site in August, one in September and three in December, when the contract expired. Homer Gabard testified that the beaver sites were reduced in July, 1999 because of the drought. A50 Asked how he knew that, he responded “just general knowledge, being told by Frankie.” A50 Asked how long the drought lasted, Gabard responded; “I’m not a weather expert. I don’t know.” A51 Frankie Brooks testified that “It was a very dry year. A lot of the sites had dried up completely, and there was very—I went around to every site and checked to see how much water was in them, if they needed trapping, just what was going on with the sites, and that was the main reason.” A57 Vernon Osteen, who works for the Washington Savannah River Company in the Environmental Services Section, and deals with

natural resources and the Clean Water Act regulations and Wetlands regulations A58, testified that there would be several sources of water in the streams; discharging from the plant sites , ground water and surface water A60, thus confirming Cromer's testimony.

### **SUMMARY OF ARGUMENT**

At the conclusion of the Appellant's case in chief, counsel for the Government moved, pursuant to RCFC 52(c) to dismiss Hooker's case. The trial court granted the motion after making several findings of fact and conclusions of law. Appellant argues that the trial court should not have granted the Rule 52(c) motion because the findings of fact are not supported by the preponderance of the credible evidence in the case and because the court demonstrated an incomplete understanding of the evidence presented.

### **ARGUMENT**

#### **Standard of Review**

In reviewing judgments of the Court of Federal Claims, the Court of Appeals reviews conclusions of law, such as contract or statutory interpretation, without deference. Mass. Bay Transp. Auth. v. United States, 254 F.3d 1367, 1372 (Fed. Cir. 2001); Kane v. United States, 43 F.3d 1446,1448 (Fed. Cir. 1994). Findings of fact receive review under the

“clearly erroneous” standard. City of El Centro v. United States, 922 F.2d 816,819 (Fed. Cir. 1990); Hankins Constr. Co. v. United States, 838 F.2d 1194,1195 (Fed. Cir. 1988). This court reviews judgments of the Court of Federal Claims to determine whether they are premised on clearly erroneous factual determinations or otherwise incorrect as a matter of law. Transamerica Ins. Corp. v. United States, 973 F.2d 1572,1576(Fed. Cir. 1991). RCFC 52(a) Effect. In all actions tried upon the facts, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to RCFC58...Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court... (c) Judgment on Partial Findings. If during a trial a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until

the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule. RCFC 52.

The trial court, both in findings of fact and conclusions of law rendered from the bench on September 13, 2007; and subsequently by written opinion of November 28, 2007, demonstrated confusion as to the testimony regarding both the beaver and hog contracts.:

I don't have any law to give you, for example, though probably very soon I will issue an opinion that will state the facts that I have been able to find and the law, and reasons for taking this action in granting the 52(c) motion. A80

But I don't know that I have a really good sense of the case as the Plaintiff presented their case. I could never understand what exactly the contract was that the Plaintiff claims was breached, and even if I could, I couldn't see damages resulting from a breach, and in most cases of this type, there are many cases in which a breach can cause problems other than money damages. A80

But in this case money damages is the only issue, and the Plaintiff has alleged bad faith in several aspects, but normally that is a serious allegation, but it is a very difficult allegation to prove against the United States, simply because the presumption at best or the law provides for government employees a presumption that they act in good faith. And which is a presumption incidentally that I afford any witness initially. In other words, I may assume someone acted in good faith and it is not a big deal, because I tend to assume that

everyone acts in good faith, and everyone tells the truth, whether they work for the government or not . But for whatever purpose bad faith was brought into it, and number one, as a matter of fact, I could not see any bad faith through the witness stand, and the next question in my mind is if I had, so what. A81

But from the very beginning, I could not see the damages here, and again if Mr. Hooker had been told in the contract, and even there I am not sure that he was, but had he been told in the contract that he didn't have to worry about radiation, and got on site and found that he did, and the classic different site conditions case, and had to run out and buy all sorts of boots, protective suits, flashlights, or whatever, then that is a different story, and he is entitled to be compensated for that. But there has been no evidence that he did that or anything else that he would have anticipated doing if he did, and there is also no evidence that he needed to frankly. A82

Hooker's claim is that the Forest Service breached the beaver contract in bad faith when it had requirements for beaver trapping yet failed to give him work orders . Hooker testified that he was given no work orders for July; i.e.he was not directed to trap anywhere. A72 The Government blamed the drought for the failure to give him work orders which indeed caused money damages for the work for which Hooker was unable to submit invoices. Granted, the beaver contract was a requirements contract and if the Government didn't have a requirement, it was not compelled to issue work orders. However, if the government enters into a requirements

contract, and has requirements under the contract, but does not use the contractor to satisfy those requirements and instead diverts business away from the contractor, the contractor is entitled to recover lost profits on the diverted business, provided it can prove them. Hi-Shear Technology Corp. v. United States, 356 F.3d 1372 (Fed. Cir. 2004) The testimony, moreover, from both Hooker and Cromer, was that the beavers were active, the streams were blocked, but Hooker received no work orders. Osteen, the government hydrologist, testified that the water in the streams came from at least three sources, only one of which would be affected by lack of rainfall. The government's reliance on drought for the failure to issue work orders is misplaced. Both government witnesses (Gabard and Brooks) testified that the reason for the sudden reduction in work orders in July, 1999 in the beaver contract, was the drought. When asked how long the drought lasted, Gabard responded: "Ma'am, I'm not a weather expert. I don't know." A51 After catching 45 beaver in June, Hooker received no work orders for July, and only four more work orders through the balance of the contract which ended in December, 1999. There was testimony from both Hooker and Cromer that there was still beaver activity. Cromer testified that the water in the beaver ponds came from springs, not rainfall A79. Osteen, the government's hydrologist, testified that both surface and groundwater filled

these streams , as well as outflow from the processing plants .A59,60 This testimony sheds doubt on the drought being the real reason for the stoppage of work orders. The court stated, however:

None of that was tied together here, however, and we found out or I did sort of for the first time just before we broke about the beaver contract and the contracting officer –well, the Plaintiff said that he only got one beaver, or his attorney did. Well, the way that I now understand it worked was that there was a work order given and it included in that work order an area to hunt for the beaver, and that the Plaintiff only got one beaver in each of the four more outings. Then there was a problem. Either the Plaintiff was not using the spray or however he gets them, or there were not that many beavers, and if there weren't as many beavers, that is not really the government's fault. I can't see where it would be their fault, whether there is a drought or something else. I can't see that as being the fault of the government. A84

The court misunderstood the testimony as to how the work orders were given by Brooks. If Hooker was given no work orders, he wasn't allowed to go out to trap beaver, thereby effectively preventing the trapping of beaver.

The Court's written opinion issued November 28, 2007 included clearly erroneous findings of fact:

### **The Hog Contract Extension**

The opinion states that: Defendant notified Mr. Hooker in June 1999 that the Forest Service would not extend its option period for the hog contract

and that it intended to issue a new solicitation. Mr. Hooker submitted a bid for the new Forest Service contract. The Forest Service eventually cancelled the solicitation. A2 Mr. Hooker submitted a bid for the new Forest Service contract, but the contracting officer advised plaintiff that the Forest Service would no longer require his services. A4 Footnote 2: “The timing of this phone conversation is unclear. The contracting officer testified that he would not remember the conversation, but agreed that it must have taken place because the Forest Service had decided to bring the hog trapping in house.” A4 “A September 4, 1999 modification extended Mr. Hooker’s contract temporarily until October 31, 1999 or until a new contract is awarded. Mr. Hooker submitted a bid for the new Forest Service contract, but the contracting officer advised plaintiff that the Forest Service would no longer require his services. FN3: Mr. Hooker stated at trial that he stopped performing the contract as of November 30, 1999 because he was tired of dealing with the government. Mr. Hooker turned in the Government’s trapping equipment on January 5, 2000, and submitted a final invoice dated November 30, 1999. Mr. Hooker conceded at trial that he did not perform services pursuant to the hog contract after November 30, 1999.” A4

The above findings are not only clearly erroneous but seek to change the wording of the modification by inserting the word “temporarily”. It appears

the court has already decided this issue on behalf of the government. The correct language: This modification extends the hog contract to October 31, 1999 or until a new contract is awarded. Critical to the issue in this case is whether this modification extended the contract until the new one was awarded in 2001. The court mischaracterizes the modification and actually adds the word “temporarily” to it. At issue in this case is how the language of the modification is to be read; especially since a new hog contract was not awarded until November, 2001. Defendant has argued that the modification should be read as limiting the contract only to October 31, 1999. This argument fails because it is undisputed that Hooker continued to perform under the modification at least until the end of November, 1999 when he was required to turn in his equipment and submit an invoice. When construing a contract, a court first examines the plain meaning of its express terms. Textron Def. Sys. V. Widnall, 143 F.3d 1465,1468 (Fed. Cir. 1998). If the terms of a contract are clear and unambiguous, they must be given their plain meaning- extrinsic evidence is inadmissible to interpret them. McAbee Constr., Inc. v. United States, 97 F. 3d 1431,1435 (Fed. Cir. 1996). Although in the Federal Circuit the Restatement of Contracts is recognized as an appropriate source of authority in contract cases,” Hansen Bancorp, Inc. v. United States, 367 F.3d 1297,1308 (Fed. Cir. 2004)(citing

Mobil Oil Exploration v. United States, 530 U.S.604,608 (2000), by in large the Federal Circuit follows the competing Williston approach, mandating that in general, trial courts should not admit extrinsic evidence to determine the meaning of contractual terms and provisions. Coast Fed. Bank v. United States, 323 F.3d 1035,1038(Fed. Cir. 2003)(en banc)(holding that when “the provisions of the Agreement are phrased in clear and unambiguous language, they must be given their plain and ordinary meaning, and we may not resort to extrinsic evidence to interpret them.”) Hills Materials Co. v. Rice, 982 F.2d 514,516 (Fed. Cir. 1992) (stating, “wherever possible words of a contract should be given their ordinary and common meaning.”). Hooker did not perform the hog contract after November 30, 1999 because he was required to turn in his equipment and traps by Homer Gabard, the contracting officer. Asked at trial if this prevented Hooker’s performance, Gabard admitted it did. A41 The Court inquired “Well, is that the case? In other words, did you prevent him from continuing the contract once you had terminated it.?” Gabard replied “The contract was closed, yes.” A41 The Court- “Right. The contract, the witness says, has been closed.—was closed, so I suppose that means the contractor is prevented from further action. Is that the normal policy?” Gabard- I don’t know that I like the word “prevented”, but he could not perform, no. And it was not—A41 Asked if

Hooker no longer had a contract, Gabard stated “It was not intended that he continue performance on the contract.” A42 Gabard did not have the ability to close this contract , the terms of the modification itself required a new contract.

A solicitation for a new hog contract had been distributed to contractors, including Hooker, in August, 1999 , with offers due on September 29, 1999 A42 Hooker bid on the new contract. A42 Gabard then requested extensions of the offers until April, 2000. A44 He testified that he told Hooker in December that the contract was being closed because the government was going to perform the work with government personnel. Yet he extended the offers until April. A44 Asked why Gabard asked Hooker to extend his offer until April, Gabard replied as follows: “We were—I guess we were still in the middle of—I know all the—I don’t—I’ve been retired three and a half years, and I don’t remember everything, but the only thing is I can assume that we were still in the—at the time I asked for the original—or the second extension of offers acceptance period, we were still unsure of what we were going to do. As a matter of fact, I don’t think I knew that we were even considering doing it in-house until I was informed by the manager, but that’s what his decision was. A44 A contract was never

awarded from that solicitation . A43 Gabard doesn't remember if Hooker was notified in writing, but testified that he was notified verbally. A43

Footnote Number 3 in the Court's opinion is clearly erroneous. "Mr. Hooker stated at trial that he stopped performing the contract as of November 30, 1999 because he was tired of dealing with the government. A careful review of the transcript reveals that Mr. Hooker definitely did not make that statement at trial. It is puzzling why the court would include such an inaccurate statement in the opinion.

The hog contract was an indefinite quantity contract. The indefinite quantity contract is described in Crown Laundry and Dry Cleaners, Inc. v. United States, 29 Fed. Cl. 506,516(1993), citing Mason v. United States, 222 Ct. Cl. 436,444, 615 F.2d 1343,1347 (1980). "An indefinite quantity contract is a contract under which the buyer agrees to purchase and the seller agrees to supply whatever quantity of goods the buyer chooses to purchase from the seller. To make such contracts enforceable, the buyer must agree to purchase from the seller at least a guaranteed minimum quantity of goods or services. If the contract contains such a minimum quantity clause, the buyer is required to purchase at least this minimum amount, but this is the extent of his legal obligation." The hog contract states a minimum quantity of 200 hogs during the contract year. The

government chose to use its own employees to hunt hogs during the years from 1999 to 2001, but this does not relieve it of its obligation to Hooker under the contract.

The Court's opinion claims that Hooker abandoned the hog contract in November, 1999.

The court points to cases such as Patton v. United States, 74 Fed. Cl. 110,118(2006) holding that when a party engages in acts inconsistent with the existence of a contract...courts have found an objective intent to abandon despite the party's assertion of subjective intent to the contrary. And Restatement (Second) of Contracts, §283 cmt. a (stating that "mere inaction on both sides, such as the failure to take any steps looking toward performance or enforcement, may indicate an intent to abandon the contract." The opinion again ignores the evidence that Hooker did not abandon, but was prevented from performance. The court should have provided findings specifically to the modification, but failed to do so.

#### Reformation of the Beaver Contract and Bad Faith Breach

The opinion states: "Plaintiff had valid contracts with the United States, but defendant did not breach its duties under those contracts. Moreover, plaintiff admitted that he suffered no damages arising from the Government's alleged breaches." A7

This is not entirely true, Hooker admitted that he suffered no money damages under the beaver contract but asked for reformation. He testified, as did Brooks and Gabard, that he asked for more money for performing the beaver contract because of the contamination but was told that he had to do the work or default the contract. Gabard testified that “he[Hooker] was told by both myself and the COR that he did not have to go into those areas if he did not want to, that if he considered the work to be outside the scope of the contract that he could refuse to do it.” When asked how Hooker would trap the beavers, Gabard responded, “we would do the work with someone else if he did not want to do it.” “we would have no alternative but to find some other way to take care of that problem” A46,47 Plaintiff asked for the remedy of reformation because by the time his requests for equitable adjustment had been denied, the beaver contract was essentially shut down. Where a contractor can show by preponderant evidence that estimates were negligently prepared...the government could be liable for appropriate damages resulting. Rumsfeld v. Applied Cos., Inc., 325 F.3d 1328 (Fed. Cir. 2003) citing Crown Laundry & Dry Cleaners, Inc. v. United States, 29 Fed. Cl.506,515(1993). In such a situation, the contractor is entitled to be paid the reasonable value of the work performed. Id. at 524. In the beaver contract, the estimates were not negligent, but the assurances within the

contract itself were negligent. It is clearly unfair that a mistake in a bid would warrant reformation, but a contractor who relied on erroneous language in the contract would not have the benefit of the remedy. The contract stated that no toxicological hazards are associated with trapping beaver at SRS. The court, in its written opinion, stated “ Mr. Hooker alleged breach of the beaver contract and stated that he was entitled to reformation because the soil in at (sic) the Savannah River Site was contaminated. He claims that he is entitled to reformation of the beaver contract because his bid would have been higher had he known of radiation risks. Plaintiff did not prove breach of the beaver contract. If radiological hazards existed at the Savannah River Site materially different from the Government’s representations, Mr. Hooker did not produce evidence that he suffered physical or financial damages as a result. The authorities could not establish that radiological hazards on the Site affected Mr. Hooker’s trapping operations.” A7 This court, in Geisler & Coniglio v. United States, 232 F.3d 864,870 (Fed. Cir. 2000) said “Parties to a contract are generally bound by its terms. However, we have recognized in limited circumstances that if the government has knowledge, or constructive knowledge, that a contractor’s bid is based on a mistake...then a trial court may reform or rescind the contract.”, citing United States v. Hamilton, 711 F.2d 1038,1046

(Fed. Cir. 1983) Generally, a contractor may obtain reformation or rescission of the contract only if the contractor establishes that its bid error resulted from a “clear cut clerical or arithmetical error, or a misreading of the specifications. Liebherr Crane Corp. v. United States, 810 F.2d 1153,1157

(Fed. Cir. 1987) In the beaver contract, Mr. Hooker did not misread the specifications. The specifications were plain and apparently false. Both Brooks and Hooker testified as to the postings of some of the beaver trapping sites as soil contamination areas. Brooks and Hooker testified as to the requirement of a work clearance permit for trapping in Site 53 . This required monitoring by Rad-Con Ops and protective gear. Tunno, the Health Physics Services Manager for the Washington Group International, Washington Savannah River Company, testified that this area was an active environmental restoration project...and there could be digging up soils and digging up rocks. So “we did have personal protective equipment, such as latex gloves, during this...project.” A62 In the written opinion, the court states: “He did not establish by convincing evidence or testimony the amount he would have bid had he known of the alleged contamination; he did not show damages.” The opinion further states that it was foreseeable to this contractor during the bidding process that radiological contamination could exist in some beaver trapping areas. A8 Hooker testified that for “hot

work” in the interior plants, a worker would be paid five times that of work that was not “hot”. He further testified that he would have increased his bid by a multiple of five. As to the foreseeability that radiological contamination could exist in some beaver trapping areas, the court failed to consider the fact that the beaver contract stated “no toxicological hazards exist”, and in many cases, the signage for soil contamination was missing or overgrown. A54,55 If the contract had been silent on the subject of contamination, one could make the argument that Hooker should have foreseen the possibility, but since the contract contained assurances of no toxicological hazards, Hooker had a right to rely on those assurances. The court similarly relies on Travelers Cas. And Sur. Contracting officer.of America v. United States, 75 Fed. Cl. 696(2007) for the proposition that a claim based on differing site conditions must show materially different conditions on site, compared to those represented by the contract, and “most importantly, the contractor must have reasonably relied upon its interpretation of the contract and contract-related documents, and show damages as a result of the reliance. Hooker relied on the contract language that stated there were no toxicological hazards when he bid the contract.

The Court further states: “His (Hooker’s) argument that the alleged soil contamination created a change in circumstances from the original contract contains a variation of a similar problem: he did not show dangerous levels of soil contamination.” A8

Mr. Hooker was not required to show dangerous levels of soil contamination, only that conditions were different than that stated in the contract; i.e. protections were required and he was not informed. The testimony at trial confirms that protections were required for work that disturbed the soil ; and Hooker was required to have a work clearance permit, monitoring and protection for trapping in Four Mile Creek .

### **CONCLUSION**

The court’s opinion states that there is a “lack of a recognizable theory of recovery” convincing the court to grant the Government’s motion for judgment on partial findings.

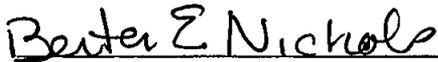
As noted previously,

a) The modification of the hog contract extended the contract until ...a new contract was awarded. The contracting officer admitted that he prevented Hooker’s performance. A plain reading of the modification demonstrates that Hooker should have the benefit of the minimum value of the contract until a new contract was awarded.

- b) Reformation is a recognizable remedy for a change in circumstances under the beaver contract, and Hooker provided testimony as to how much he would have bid on this contract had he known the true facts.
- c) And, if the government had requirements under the beaver contract, and failed to give the work to Hooker, Hooker is entitled to damages.

The Appellant, William Hooker, for the reasons and arguments set forth above, respectfully request that this Court reverse the Order of the United States Court of Claims dated November 28, 2007, and remand this case to that Court for further proceedings.

Respectfully submitted,

  
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Attorney for Plaintiff-Appellant

May 20, 2008

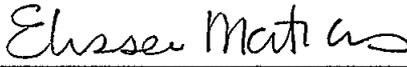
**DECLARATION OF AUTHORITY PURSUANT TO  
28 U.S.C. § 1746 AND FEDERAL CIRCUIT RULE 47.3(d)**

I, Elissa Matias, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by BERTA E. NICHOLS, ATTORNEYS FOR PLAINTIFF-APPELLANT.

This brief has been submitted to Counsel Press, by the above Attorneys, electronically and/or has been reprinted to comply with this Court's rules. Because of time restraints and the distance between counsel of record and Counsel Press, counsel of record is unavailable to provide an original signature, in ink, to be bound in one of the briefs. The signatures produced in this document have been signed, or resigned by me pursuant to 28 U.S.C. §1746 and Federal Circuit Rule 47.3(d) with actual authority on behalf of an attorney appearing for the party.

Date: May 20, 2008

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Elissa Matias

# **APPENDIX**

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# In the United States Court of Federal Claims

No. 03-1501C  
(Filed: November 28, 2007)

\* \* \* \* \*

WILLIAM HOOKER d/b/a \*  
 GEORGIA BOWHUNTERS \*  
 SUPPLY, \*

Plaintiff, \*

v. \*

UNITED STATES OF AMERICA, \*

Defendant. \*

\* \* \* \* \*

Trial; RCFC 52(c); Breach of Contract;  
Differing Site Conditions;  
Equitable Adjustment.

Robbie Nichols, Hilton Head, South Carolina, for plaintiff.

Richard Schroeder, United States Department of Justice, Commercial Litigation Division,  
Court of Federal Claims Section, Washington, D.C., for defendant.

## ORDER AND OPINION

**HODGES**, Judge

The United States owns a large tract of land in South Carolina known as the Savannah River Site. Savannah River produces various types of radioactive isotopes for defense, exploration, and medical purposes. The Department of Energy is responsible for the operation and maintenance of the site, including waste management and environmental remediation activities. The entire area is heavily forested.

The Department of Energy contracted with plaintiff in October 1997 to trap wild hogs and beavers that were causing various types of damage on the Site. The indefinite quantity contract required Mr. Hooker to hunt and trap hogs using specially trained dogs and hog traps. The Beaver Contract required Mr. Hooker to remove beavers whose activities had flooded timber sites and blocked culverts.

For various reasons, the parties to the contract became disaffected with regard to contract

performance. Defendant notified Mr. Hooker in June 1999 that the Forest Service would not extend its option period for the hog contract and that it intended to issue a new solicitation. Mr. Hooker submitted a bid for the new Forest Service contract. The Forest Service eventually cancelled the solicitation.

Plaintiff filed suit in this court alleging that defendant breached the hog contract and the beaver contract. The Government filed a motion to dismiss for lack of jurisdiction and failure to state a claim for which relief may be granted. The court resolved these preliminary issues and we conducted a trial in Aiken, South Carolina. Defendant moved for judgment on partial findings pursuant to Rule 52(c) at the close of plaintiff's case. For reasons stated on the record of trial, we granted defendant's motion.

## BACKGROUND

### I. Savannah River Site

The Savannah River Site is a large government research area located in Aiken, Barnwell, and Allendale counties, South Carolina. The site contains a number of complex and unique nuclear facilities that produce radioactive isotopes used for defense, space exploration, and medical purposes. The Department of Energy's Savannah River Operations Office has responsibility for management of facilities at Savannah River, including waste management and environmental remediation activities conducted at the Site. A small portion of the Site is used for nuclear waste management, environmental clean-up, and administrative facilities; the remaining acreage is heavily forested.

The Department of Energy has an interagency agreement with the Forest Service to oversee the natural resources at the Savannah River Site, including timber and wildlife management. DOE studies all operable units at the Site that may contain hazardous or radioactive waste. DOE defines long term exposure to radiation as 2000 hours per year for twenty-five years, consistent with industrial exposure using Environmental Protection Agency risk assessment methods.

DOE conducts a comprehensive monitoring program for hazardous chemicals and radioactivity in the environment, including air, soil, water and wildlife. The Agency takes more than one hundred water samples per year for environmental monitoring and clean-up investigation.

Mr. Hooker was familiar with radioactive material. He worked at the Savannah River Site from June 1976 to March 2000 as a pipe fitter and a plumber in the tank farms where nuclear waste from chemical separations facilities was stored. Plaintiff continued to work in nuclear facilities at Savannah River after he left the tank farms, including the Tritium Facility and the L-Reactor, which were being rebuilt. For his work in the Tritium facility, Mr. Hooker dressed in a plastic suit with an air hose. He was familiar with radiation danger signs and the risks of

operating in contaminated areas. Mr. Hooker's first contracts with the Forest Service at the Savannah River Site predated those at issue in this case by at least five years, beginning in February 1992.

## II. The Hog Contract

The technical proposal Mr. Hooker submitted during the pre-award process stated that he and a staff of three men would manage the hog contract. He would use traps and specially trained dogs to hunt and trap the hogs for \$55 each. The Government estimated that the job would require trapping a minimum of 200 hogs. Defendant awarded plaintiff the indefinite quantity contract for one year, with two option years that the Government could exercise in its discretion.<sup>1</sup> The contract's term would not exceed three years. The Government exercised the first option on October 1, 1998, extending the contract term through September 30, 1999.

The contract required Mr. Hooker to deliver carcasses of trapped hogs to a cooler maintained by the Forest Service. The hogs would be accompanied by a log showing the weight, age, sex, and reproductive data for each hog, along with the areas in which the hogs were trapped. Mr. Hooker and his employees submitted to monitoring by on-site Health Protection personnel after trapping in specified areas.

A wildlife ecologist conducted a study of the wild hog population in the Savannah River area for the Government in 1999. His study included research on the hogs that plaintiff's company had trapped and placed in the Forest Service's cooler. The ecologist found that plaintiff had been putting hog fetuses into the cooler and logging them for payment. The Government withheld payment for six fetuses that had been logged, and advised Hooker that he would not be paid for this practice in the future. Later, the contracting officer sent Mr. Hooker a letter notifying him that "some actions taken in performance of this contract . . . have not been proper or in compliance with the contract and some of the actions could be considered illegal." Letter from Mr. Gabard to Mr. Hooker, June 30, 1999.

The contracting officer alleged that plaintiff's company had (1) entered fetal pigs on the Wild Hog Data Table in an attempt to receive payment for them; (2) attempted to obtain payment for thirty-one domestic pigs; (3) removed hogs and pigs from the cooler before the contracting officer could verify their status; (4) left hogs in the woods to rot; and 5) entered hogs in the Data Table without bringing them to the cooler. The contracting officer suspected that the contractor was removing hogs and pigs from the cooler and returning them later, obtaining payment for the same animals twice.

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<sup>1</sup> The Government's agreement with plaintiff was "an indefinite-quantity contract for the supplies and services specified, and effective for the period stated in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract. See 52 FAR § 216.22 (1995).

The contracting officer concluded that Mr. Hooker, owner of the company, was not responsible for this conduct because his employees had acted on their own. For that reason, apparently, he did not terminate the contract for default. Instead, he deducted \$1,320 from Hooker's June invoice for twenty-four animals that were non-feral domestic pigs, and for which he had already been paid. He informed Mr. Hooker that all hogs and pigs would be marked with spray paint at the cooler so they could not be submitted for payment again. Hooker would not be paid for any animal removed from the cooler before an inspector had issued a receipt for that animal. The employees who conducted the improper activities could no longer work for Mr. Hooker.

The contracting officer informed Mr. Hooker on June 30, 1999, that the Forest Service would not exercise its second option, but would issue a new contract. A September 4, 1999 modification extended Mr. Hooker's contract temporarily to "October 31, 1999 or until a new contract is awarded." Mr. Hooker submitted a bid for the new Forest Service contract, but the contracting officer advised plaintiff that the Forest Service would no longer require his services.<sup>2</sup> Mr. Hooker turned in the Government's trapping equipment on January 5, 2000, and submitted a final invoice dated November 30, 1999. Mr. Hooker conceded at trial that he did not perform services pursuant to the hog contract after November 30, 1999.<sup>3</sup>

### III. The Beaver Contract

The Government awarded the beaver contract to Mr. Hooker's company two years after award of the hog contract in January 1999. The contractor would remove problem beavers whose activities had flooded timber sites and blocked culverts. Plaintiff would be responsible for clearing beaver dams and debris from the blocked culverts. The beaver contract provided that "[e]stimated quantities are intended as a good faith estimate of the quantities to be ordered. However, the Government is not obligated to order any work to be performed under the resulting contract for either the base period or the option period. See 52 FAR § 216.21 (1995). Mr. Hooker was required to provide maps and other information showing where the beavers were trapped or removed. See Contract Schedule, Sec. B. Mr. Hooker bid \$45 per trapped beaver and \$18 per hour for culvert cleaning from the date of contract award to December 31, 1999.

The beaver contract contained a clause similar to the requirements clause used in the hog contract:

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<sup>2</sup> The timing of this phone conversation is unclear. The contracting officer testified that he could not remember the conversation, but agreed that it must have taken place because the Forest Service had decided to bring the hog trapping in house.

<sup>3</sup> Mr. Hooker stated at trial that he stopped performing the contract as of November 30, 1999, because he was tired of dealing with the Government.

This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities or supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

Beaver Contract, Sec. I.7 (emphasis added).

The Government asserted in the beaver contract that no toxicological hazards were associated with beaver trapping at the Savannah River site. Technical specifications showed that the contractor could expect normal environmental hazards such as snakes and uncertain footing. The beaver contract limited trapping to areas directed by Forest Service personnel: "[S]elective trapping shall be conducted only in critical areas identified by the Savannah River Institute personnel [and] the contractor will only trap the areas designated by the Contracting Officer's Representative (COR), Inspectors, or the Contracting Officer." Tech Spec. A.

The contracting officer informed plaintiff on November 29, 1999, that the Forest Service would not extend the beaver contract at the end of the base period and would not exercise its option to renew the contract. The beaver contract expired on December 31, 1999.

#### IV. Plaintiff's Concerns

Mr. Hooker became concerned that he might have been exposed to hazardous substances during his work on the beaver and hog contracts. He wrote a letter to the Centers for Disease Control in Atlanta on January 6, 2000, to express this concern. Meanwhile, Savannah River's Safety and Industrial Hygiene office investigated the matter and reported that, based on the assumption that his employees had each accidentally ingested 10 grams of soil per year, the maximum dose to a beaver trapper would be 2 millirems per year. This would be the equivalent of one-fourth the exposure from one chest X-ray and 1/150 of the radiation humans receive from natural sources.

The CDC referred Mr. Hooker's letter to the National Institute for Occupational Safety and Health, which conducted an investigation at Savannah River March 20 – March 22, 2000. The Safety and Health Institute study found "no basis for a substantial health risk due to exposure to radioactivity" at the Site. The Institute also examined the water quality of local streams and found that samples rarely approached concentrations that would trigger concerns about water quality standards there. It concluded, "beaver and pig trapping at SRS has not been associated with harmful exposure to radioactive or toxic environmental contaminants."<sup>4</sup>

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<sup>4</sup> Mr. Hooker does not allege in his complaint that he suffered physical harm from alleged exposure to radiological hazards at the Savannah River Site.

## DISCUSSION

We granted defendant's motion pursuant to RCFC 52(c) at the close of plaintiff's case. A Rule 52(c) motion is similar in effect to a motion for directed verdict, but it differs in important respects. See Fed. R. Civ. P. 50(a). When considering a motion for directed verdict, the court makes "all reasonable inferences and resolves all issues of credibility in the plaintiff's favor." Persyn v. United States, 34 Fed. Cl. 187, 195 (1995). RCFC 52(c) provides, "the judge may weigh the evidence and is not required to resolve all issues of evidence and credibility in the plaintiff's favor."

### I. Rule 52(c) Motions

RCFC 52(c) provides,

[i]f during a trial a party has been fully heard with respect to an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party on any claim, counterclaim, cross-claim or third-party claim that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence.

The Court of Claims explained the importance of the Rule in the circumstances of this case:

When a court sitting without a jury has heard all of the plaintiff's evidence, it is appropriate that the court shall then determine whether or not the plaintiff has convincingly shown a right to relief. A plaintiff who has had full opportunity to put on his own case and has failed to convince the judge, as trier of the facts, of a right to relief, has no legal right under the due process clause of the Constitution, to hear the defendant's case, or to compel the court to hear it, merely because the plaintiff's case is a prima facie one in the jury trial sense of the term.

Howard Indus., Inc. v. United States, 126 Ct. Cl. 283, 288 (1946).

The importance of RCFC 52(c) is evident in this case, where it appears that plaintiff intended to develop his case through cross examination of defendant's witnesses. Mr. Hooker's own case established no credible or coherent causes of action and no damages. As the Court of Claims emphasized, "a plaintiff who has had full opportunity to put on his own case and has failed to convince the judge . . . of a right to relief, has no legal right . . . to hear the defendant's case, or to compel the court to hear it . . ." Id. at 288.

## II. Breach of Contract

Plaintiff had to prove that he had a valid contract with the United States; that defendant undertook an obligation or duty arising out of the contract; that defendant breached that duty; and plaintiff could prove damages arising from the breach. See Carlos Irrigation and Drainage Dist. v. United States, 877 F.2d 957, 959 (Fed.Cir. 1989). Plaintiff had valid contracts with the United States, but defendant did not breach its duties under those contracts. Moreover, plaintiff admitted that he suffered no damages arising from the Government's alleged breaches.

### A. Hog Contract

Plaintiff argued that he was entitled to damages based upon an alleged two-year extension of the Hog Contract pursuant to Modification No. 4. Modification No. 4 states: "Contract is extended to October 31, 1999, or until a new contract is awarded." Hooker contended that Modification No. 4 was a new contract that obligated defendant to pay him a 200-hog minimum until the Government formed an agreement with a new contractor. Plaintiff abandoned the hog contract in November 1999, however. Mr. Hooker testified at trial that he did not perform or attempt to perform after November 30, 1999. He returned government equipment to the Forest Service in January 2000, with a final invoice dated November 30, 1999. He did not request additional payment or attempt to perform any part of the contract thereafter.<sup>5</sup>

### B. Beaver Contract

Mr. Hooker alleged breach of the beaver contract and stated that he was entitled to reformation because the soil in at the Savannah River Site was contaminated. He claims that he is entitled to reformation of the beaver contract because his bid would have been higher had he known of the radiation risks. Plaintiff did not prove breach of the beaver contract. If radiological hazards existed at the Savannah River Site materially different from the Government's representations, Mr. Hooker did not produce evidence that he suffered physical or financial damages as a result. The authorities could not establish that radiological hazards on the Site affected Mr. Hooker's trapping operations.

#### 1. Equitable Adjustment

Mr. Hooker argued that he was entitled to an equitable adjustment because he might have

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<sup>5</sup> See, e.g., Patton v. United States, 74 Fed.Cl. 110, 118 (2006) (holding "[w]hen a party engages in acts inconsistent with the existence of a contract . . . courts have found an objective intent to abandon despite the party's assertion of subjective intent to the contrary.") (quoting Franconia Assocs. v. United States, 61 Fed.Cl. 718, 745 (2004)), and Restatement (Second) of Contracts § 283 cmt. a (stating that "mere inaction on both sides, such as the failure to take any steps looking toward performance or enforcement, may indicate an intent to abandon the contract.").

submitted a higher bid if he had known of the contamination. Such a contention is too speculative for us to consider in calculating damages against the United States. Moreover, the argument has obvious logical problems. A higher bid might have resulted in another bidder having won the contract. His argument that the alleged soil contamination created a change in circumstances from the original contract contains a variation of a similar problem: he did not show dangerous levels of soil contamination. If he had, he did not show that it damaged him. Mr. Hooker had no evidence of additional time or money spent on the beaver contract because of the soil contamination. He cannot recover damages that he did not incur.

## 2. Differing Site Condition

A claim based on differing site conditions must show materially different conditions on site, compared to those represented by the contract. The conditions must be reasonably unforeseeable based on all the information available to the contractor at the time of bidding. Travelers Cas. and Sur. Contracting officer. of America v. United States, 75 Fed.Cl. 696 (2007). Most importantly, the contractor must have reasonably relied upon its interpretation of the contract and contract-related documents, and show damages as a result of the reliance. Id.

Mr. Hooker's differing site condition claim is the same or related to the claims discussed above. He did not establish by convincing evidence or testimony the amount that he would have bid had he known of the alleged contamination; he did not show damages. Plaintiff was well familiar with the area containing the Savannah River Site. He had worked at the Site and he knew that radiation was a concern. Mr. Hooker had extensive radiological training during his work at the Site from 1976 through 2000. He was familiar with radiation signs, including SOIL CONTAMINATION AREA, UNDERGROUND RADIOACTIVE MATERIAL, RADIOLOGICAL BUFFER ZONE, RADIATION AREA, HIGH RADIATION AREA, and CONTAMINATION AREA. It was foreseeable to this contractor during the bidding process that radiological contamination could exist in some beaver trapping areas.

## CONCLUSION

Mr. Hooker seemed to be searching for a punitive remedy against the Government for the Forest Service's alleged failure to inform him that some trapping sites could be contaminated. We do not have jurisdiction to provide such a remedy in the circumstances presented. Plaintiff did not present a valid theory of recovery during trial. He could not prove he was damaged by relying on language in the original contract, or in any other manner. In fact, Mr. Hooker testified that he was not claiming damages. He did not suffer physical damage and he did not spend additional money on the contract once he discovered that some sites allegedly were contaminated. Mr. Hooker abandoned the hog contract as of November 29, 1999, the effective date of his final invoice. He returned defendant's trapping equipment along with the invoice in January 2000.

These findings of fact, along with the lack of a recognizable legal theory of recovery, convinced the court to grant the Government's motion for judgment on partial findings when plaintiff rested. The reasons are summarized here, and stated more fully on the record of trial. The Clerk of the Court will dismiss plaintiff's complaint and enter judgment for defendant. No costs.

SO ORDERED.

s/ Robert H. Hodges, Jr.

Robert H. Hodges, Jr.

Judge

**In the United States Court of Federal Claims**

No. 03-1501 C

**WILLIAM HOOKER d/b/a GEORGIA  
BOWHUNTERS SUPPLY,**

**JUDGMENT**

v.

**THE UNITED STATES**

Pursuant to the court's Published Order and Opinion, filed November 28, 2007,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that judgment is in favor of defendant and the complaint is dismissed. No costs.

Brian Bishop  
Clerk of Court

November 30, 2007

By: s/Lisa L. Reyes

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$455.00.

APPEAL, CLOSED, ECF, LEAD

**US Court of Federal Claims  
United States Court of Federal Claims (COFC)  
CIVIL DOCKET FOR CASE #: 1:03-cv-01501-RHH**

HOOKER v. USA  
Assigned to: Sr. Judge Robert H. Hodges, Jr  
Demand: \$220,000  
Member case: (View Member Case)  
Case in other court: 08-05059  
Cause: 28:1491 Tucker Act

Date Filed: 06/17/2003  
Date Terminated: 11/30/2007  
Jury Demand: None  
Nature of Suit: 114 Contract - Service  
(CDA)  
Jurisdiction: U.S. Government  
Defendant

**Plaintiff**

**WILLIAM D. HOOKER**  
*d/b/a GEORGIA BOWHUNTERS  
SUPPLY*

represented by **Berta E. Nichols**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

USA

represented by **Lindsay E. Williams**  
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**Richard Paul Schroeder**  
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**TERMINATED: 03/02/2004**  
**ATTORNEY TO BE NOTICED**

| <b>Date Filed</b> | <b>#</b> | <b>Docket Text</b>   |
|-------------------|----------|--|
| 06/17/2003        | <u>1</u> | COMPLAINT against USA (AGR) (Filing fee \$150, Receipt number 057860), filed by WILLIAM D. HOOKER. Answer Due by 8/18/2003. (Attachments: # <u>1</u> Civil Cover Sheet)(dw1, ) (Entered: 06/18/2003) |
| 06/17/2003        | <u>2</u> | NOTICE of Assignment to Judge Francis M. Allegra. (dw1, ) (Entered: 06/18/2003)  |
| 06/17/2003        | 3        | NOTICE of Designation of Electronic Case. (dw1, ) (Entered: 06/18/2003)  |
| 07/24/2003        | 4        | NOTICE of Appearance by Nancy Myung-Jin Kim for USA. (Kim, Nancy) (Entered: 07/24/2003)  |
| 08/15/2003        | <u>5</u> | MOTION for Extension of Time to File Answer re <u>1</u> Complaint until 9/17/2003 by USA. Response due by 9/2/2003 (Kim, Nancy) (Entered: 08/15/2003)  |
| 08/15/2003        | <u>6</u> | SPECIAL PROCEDURES ORDER Signed by Judge Francis M. Allegra. [STRICKEN per Order of 8/20/03] (si1, ) Modified on 8/22/2003 (jcp, ). (Entered: 08/15/2003)  |
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| 08/18/2003 |           | ORDER granting <u>5</u> Motion for Extension of Time to Answer, Answer Due by 9/17/2003.Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 08/18/2003)  |
| 08/20/2003 | 7         | SPECIAL PROCEDURES ORDER Signed by Judge Francis M. Allegra. (si1, ) (Entered: 08/20/2003)  |
| 08/20/2003 |           | ORDER Striking <u>6</u> Order. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 08/20/2003)  |
| 09/17/2003 | 8         | MOTION to Dismiss pursuant to Rule 12(b)(1), MOTION to Dismiss pursuant to Rule 12(b)(6) by USA. Response due by 10/20/2003 (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u> # <u>10</u> # <u>11</u> # <u>12</u> # <u>13</u> # <u>14</u> # <u>15</u> # <u>16</u> # <u>17</u> # <u>18</u> # <u>19</u> # <u>20</u> # <u>21</u> # <u>22</u> # <u>23</u> # <u>24</u> # <u>25</u> # <u>26</u> )(Kim, Nancy) (Entered: 09/17/2003)  |
| 10/20/2003 | 9         | RESPONSE to <u>8</u> MOTION to Dismiss pursuant to Rule 12(b)(1) filed by WILLIAM D. HOOKER. Reply due by 11/3/2003. (Nichols, Berta) (Entered: 10/20/2003)   |
| 11/03/2003 | 10        | REPLY to Response to Motion re <u>8</u> MOTION to Dismiss pursuant to Rule 12(b)(1) and 12(b)(6) filed by USA. (Kim, Nancy) (Entered: 11/03/2003)   |
| 01/12/2004 | <u>11</u> | ORDER Setting Hearing on Motion <u>8</u> MOTION to Dismiss pursuant to Rule 12(b)(1): Oral Argument set for 2/20/2004 02:00 PM in Courtroom before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 01/12/2004)  |
| 01/28/2004 | 12        | ORDER Setting Hearing on Motion <u>8</u> MOTION to Dismiss pursuant to Rule 12(b)(1): Oral Argument set for 2/20/2004 at 01:00 PM (EST)instead of 2:00 p.m. in Courtroom before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 01/28/2004)   |
| 02/20/2004 |           | Set/Reset Transcript Deadlines: Transcript due by 3/22/2004. (vp1, ) (Entered: 02/20/2004)  |
| 02/25/2004 | <u>13</u> | UNPUBLISHED OPINION: Dft's motion to dismiss pltf's complaint is hereby GRANTED, in part, and DENIED, in part. Paragraphs 5 through 22 of pltf's complaint, relating to the subject hog contract, are hereby DISMISSED, without prejudice, for lack of jurisdiction. Dft's motion to dismiss the remainder of pltf's complaint is hereby DENIED. However, on or before 3/19/04, Plaintiff shall file an amended complaint in this case, at the least, the two matters cited. The filing of an answer in response to this amended complaint is stayed until further order of this court. Instead, on or before 4/2/2004, the parties shall file a joint status report. Signed by Judge Francis M. Allegra. (si1, ) Modified on 2/26/2004 to correct the filing date and to add further description into the docket text (jcp, ). (Entered: 02/26/2004) |
| 02/25/2004 |           | Set/Reset Deadlines: Amended Pleadings due by 3/19/2004. (jcp, ) (Entered: 02/26/2004)  |
| 03/02/2004 | <u>14</u> | NOTICE of Appearance by Margaret Evalyn McGhee for USA. (McGhee, Margaret) (Entered: 03/02/2004)  |
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| 03/02/2004 |           | *** Attorney Nancy Myung-Jin Kim terminated. (jcp, ) (Entered: 03/03/2004)  |
| 03/17/2004 | <u>15</u> | AMENDED COMPLAINT. (Nichols, Berta) Modified on 3/17/2004 (dw1). (Entered: 03/17/2004)  |
| 03/24/2004 | <u>17</u> | TRANSCRIPT of Proceedings in One Volume held on 2/20/2004 before Judge Francis M. Allegra. (jcp, ) (Entered: 03/29/2004)  |
| 03/26/2004 | <u>16</u> | First MOTION for Extension of Time until April 23, 2004 to file Joint Status Report by USA. Response due by 4/12/2004 (McGhee, Margaret) (Entered: 03/26/2004)  |
| 03/29/2004 |           | ORDER granting <u>16</u> Motion for Extension of Time to file Joint Status Report. Joint Status Report due by 4/23/2004. Signed by Judge Francis M. Allegra. (Allegra, Francis) Modified on 3/30/2004 (dw1). (Entered: 03/29/2004)  |
| 04/23/2004 | <u>18</u> | JOINT STATUS REPORT by USA. (McGhee, Margaret) (Entered: 04/23/2004)  |
| 04/23/2004 | <u>19</u> | JOINT STATUS REPORT by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 04/23/2004)  |
| 05/21/2004 | <u>20</u> | ORDER STAYING CASE: The court hereby stays further proceedings in this case pending a final decision on the April 10, 2004, claim by the contracting officer. The parties shall notify the court immediately upon learning of the contracting officer's determination. Signed by Judge Francis M. Allegra. (sil, ) (Entered: 05/21/2004)  |
| 06/04/2004 | <u>21</u> | NOTICE of Appearance by Lindsay Elizabeth Williams for USA. (Williams, Lindsay) (Entered: 06/04/2004)   |
| 06/04/2004 |           | *** Attorney Margaret Evalyn McGhee terminated. (dw1) (Entered: 06/04/2004)   |
| 06/16/2004 | <u>22</u> | JOINT STATUS REPORT by all parties. (Williams, Lindsay) (Entered: 06/16/2004)   |
| 06/16/2004 | <u>23</u> | JOINT STATUS REPORT <i>s/Berta E. (Robbie)Nichols</i> by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 06/16/2004)  |
| 07/23/2004 | <u>24</u> | ORDER consolidating this case with case number 04-1126C. On or before 9/7/2004, dft shall respond both to pltf's complaint filed on 7/7/2004, as well as pltf's amended complaint filed in this case on 3/7/2004. Signed by Judge Francis M. Allegra. (sil, ) Modified on 7/23/2004 to add text about the response to pltf's complaint and amended complaint (jcp, ). (Entered: 07/23/2004) |
| 07/23/2004 |           | Set/Reset Deadlines: On or before 9/7/2004, dft shall respond both to pltf's complaint filed on 7/7/2004, as well as pltf's amended complaint filed in this case on 3/7/2004. (jcp, ) (Entered: 07/23/2004)   |
| 09/07/2004 | <u>25</u> | ANSWER to <u>15</u> Amended Complaint by USA. JPSR due by 10/29/2004. (Williams, Lindsay) (Entered: 09/07/2004)   |
| 10/29/2004 | <u>26</u> | JOINT PRELIMINARY STATUS REPORT. (Williams, Lindsay) (Entered: 10/29/2004)  |

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|            |           | 10/29/2004)   |
| 11/08/2004 | <u>27</u> | PRELIMINARY SCHEDULING CONFERENCE Order Scheduling Conference set for 12/21/2004 02:00 PM via telephone before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 11/08/2004)  |
| 12/22/2004 | <u>28</u> | SCHEDULING ORDER: Motion to dismiss under RCFC 12 due by 1/10/2005; subsequent filings to be in accordance with the timing provisions of the RCFC. All future filings in this case and No. 04-1126, to be filed under this case. Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 12/22/2004)                               |
| 01/10/2005 | 29        | MOTION to Dismiss pursuant to Rule 12(b)(1), MOTION to Dismiss pursuant to Rule 12(b)(6) by USA. Response due by 2/10/2005 (Attachments: # 1 Appendix Part 1# 2 Appendix Part 2# 3 Appendix Part 3# 4 Appendix Part 4# 5 Appendix Part 5# 6 Appendix Part 6# 7 Appendix Part 7)(Williams, Lindsay) (Entered: 01/10/2005)                    |
| 02/05/2005 | 30        | RESPONSE to 29 MOTION to Dismiss pursuant to Rule 12(b)(1) filed by WILLIAM D. HOOKER. Reply due by 2/24/2005. (Nichols, Berta) Modified on 2/8/2005 (jat, ). (Entered: 02/05/2005)   |
| 02/05/2005 |           | Set/Reset Deadlines: Reply due by 2/24/2005. (jat, ) (Entered: 02/08/2005)  |
| 02/24/2005 | <u>31</u> | REPLY to Response to Motion re 29 MOTION to Dismiss pursuant to Rule 12(b)(1) filed by USA. (Williams, Lindsay) (Entered: 02/24/2005)   |
| 05/17/2005 | <u>32</u> | ORDER Setting Hearing on Motion <u>29</u> MOTION to Dismiss pursuant to Rule 12(b)(1): Oral Argument set for 7/29/2005 02:00 PM in National Courts Building before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) Modified on 5/17/2005 (jat, ). (See Order of 5/17/05 striking this document) (Entered: 05/17/2005) |
| 05/17/2005 |           | ORDER Striking <u>32</u> Order Setting Oral Argument/Hearing on Motion, clerical error with a wrong date filed. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 05/17/2005)   |
| 05/17/2005 | <u>33</u> | ORDER Setting Hearing on Motion <u>29</u> MOTION to Dismiss pursuant to Rule 12(b)(1): Oral Argument set for 7/29/2005 02:00 PM in National Courts Building before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 05/17/2005)  |
| 07/26/2005 | <u>34</u> | ORDER Resetting Hearing on Motion 29 MOTION to Dismiss pursuant to Rule 12(b)(1): Oral Argument reset for 7/29/2005 01:00 PM in National Courts Building before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 07/26/2005)  |
| 07/29/2005 |           | Set/Reset Transcript Deadlines: Transcript due by 8/29/2005. (vp1, ) (Entered: 07/29/2005)  |
| 08/15/2005 | <u>35</u> | JOINT STATUS REPORT <i>With Proposed Discovery Plan</i> by all parties. (Williams, Lindsay) (Entered: 08/15/2005)   |
| 08/15/2005 |           | TRANSCRIPT (Pg 1-37) of Proceedings held on 7/29/05 before Judge Francis  |

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|            |           | M. Allegra. (eph, ) (Entered: 08/17/2005)   |
| 08/26/2005 | <u>36</u> | ORDER granted, in part, and denied, in part 29 Motion to Dismiss. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 08/26/2005)   |
| 10/03/2005 | <u>37</u> | DISCOVERY SCHEDULING ORDER: Fact Discovery due by 12/15/2005. Discovery due by 3/31/2006. Joint Status Report due by 4/15/2006. Signed by Judge Francis M. Allegra. (si1, ) (Entered: 10/03/2005)   |
| 10/03/2005 |           | Set/Resct Deadlines: Plaintiff's Expert Report due by 1/20/2006. (jat, ) (Entered: 10/03/2005)  |
| 10/03/2005 |           | Set/Reset Deadlines: Defendant's Expert Report due by 2/20/2006. (jat, ) (Entered: 10/03/2005)  |
| 11/23/2005 | <u>38</u> | Joint MOTION for Extension of Time,until 30, to Complete Discovery, filed by WILLIAM D. HOOKER, USA. Response due by 12/12/2005. (Williams, Lindsay) (Entered: 11/23/2005)  |
| 11/28/2005 | <u>39</u> | ORDER granting <u>38</u> Motion for Extension of Time to Complete Discovery. Fact discovery due by 1/17/2006. Expert discovery due by 5/1/2006. Joint status Report due by 5/15/2006. Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 11/28/2005)                                  |
| 01/13/2006 | <u>40</u> | MOTION for Extension of Time,until 60, to Complete Discovery, filed by USA. Response due by 1/30/2006. (Williams, Lindsay) (Entered: 01/13/2006)  |
| 01/20/2006 | <u>41</u> | MOTION to Compel <i>Discovery and For Expedited Consideration</i> , filed by USA. Response due by 2/6/2006. (Attachments: # 1 # 2 # 3)(Williams, Lindsay) (Entered: 01/20/2006)   |
| 01/30/2006 | <u>42</u> | RESPONSE to <u>40</u> MOTION for Extension of Time,until 60, to Complete Discovery, filed by WILLIAM D. HOOKER. Reply due by 2/13/2006. (Nichols, Berta) (Entered: 01/30/2006)  |
| 02/02/2006 | <u>43</u> | ORDER granting <u>40</u> Motion for Extension of Time to Complete Discovery Fact Discovery due by 3/30/2006. Plaintiff expert witness due 4/27/2006; defendant expert witness due 5/25/2006; Joint Status Report due by 7/20/2006 Signed by Judge Francis M. Allegra. (si1, ) (Entered: 02/02/2006) |
| 02/02/2006 |           | Set/Reset Deadlines: Plaintiff shall file an Expert Witness Report due by 4/27/2006. Defendant shall file an Expert Witness Report due by 5/25/2006. (mij, ) (Entered: 02/02/2006)  |
| 02/02/2006 |           | Set/Reset Deadlines: Defendant's Expert Witness Report due by 5/25/2006. (mij, ) (Entered: 02/02/2006)  |
| 02/06/2006 | <u>44</u> | RESPONSE to <u>41</u> MOTION to Compel <i>Discovery and For Expedited Consideration</i> , filed by WILLIAM D. HOOKER. Reply due by 2/21/2006. (Attachments: # 1 # 2)(Nichols, Berta) (Entered: 02/06/2006)  |
| 02/06/2006 |           | Set/Reset Deadlines: . Reply due by 2/21/2006. (mij, ) (Entered: 02/06/2006)  |
| 02/15/2006 | <u>45</u> | REPLY to Response to Motion re <u>41</u> MOTION to Compel <i>Discovery and For Expedited Consideration</i> , filed by USA. (Williams, Lindsay) (Entered: 02/15/2006)  |

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|            |           | 02/15/2006)  |
| 02/22/2006 | <u>46</u> | ORDER Setting Hearing on Motion <u>41</u> MOTION to Compel <i>Discovery and For Expedited Consideration</i> : Motion Hearing set for 2/28/2006 10:00 AM via telephone before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (sil, ) (Entered: 02/22/2006)   |
| 02/22/2006 |           | Set/Reset Hearings: Hearing set for 2/28/2006 10:00 AM in Chambers (Telephonic) before Judge Francis M. Allegra. (mij, ) (Entered: 02/22/2006)   |
| 02/28/2006 | <u>47</u> | DISCOVERY SCHEDULING ORDER: Plaintiff revised version of its Interrogatories #20 due by 3/10/2006. Written Discovery due by 4/7/2006. Fact Discovery due by 5/5/2006. Expert Report due by 6/2/2006. 8/11/2006 all expert discovery shall be completed. Status Report due by 8/25/2006 Signed by Judge Francis M. Allegra. (sil, ) (Entered: 02/28/2006)   |
| 02/28/2006 |           | Set/Reset Transcript Deadlines: Transcript due by 3/28/2006. (vp1, ) (Entered: 02/28/2006)   |
| 03/24/2006 | <u>48</u> | TRANSCRIPT of Proceedings held on February 28, 2006 before Judge Francis M. Allegra. (dw1) (Entered: 03/27/2006)   |
| 04/27/2006 | <u>49</u> | NOTICE of Appearance by Richard Paul Schroeder for USA: (Schroeder, Richard) (Entered: 04/27/2006)   |
| 04/27/2006 | <u>50</u> | Unopposed MOTION for Extension of Time until 07/31/06 to Complete Fact Depositions, filed by USA. Response due by 5/15/2006.(Schroeder, Richard) (Entered: 04/27/2006)   |
| 05/01/2006 | <u>51</u> | ORDER granting in part and denying in part <u>50</u> Motion for Extension of Time to complete fact depositions. Expert Witness Report due by 7/5/2006; Opposing Witness report(if necessary)due by 7/31/2006; Discovery shall be completed by 9/11/2006. Joint Status Report due by 9/25/2006. Signed by Judge Francis M. Allegra. (sil, ) (Entered: 05/01/2006)   |
| 06/23/2006 | <u>52</u> | Unopposed MOTION to Stay Expert Discovery and Filing of Expert Witness Reports, filed by USA. Response due by 7/10/2006.(Schroeder, Richard) (Entered: 06/23/2006)   |
| 06/26/2006 |           | SCHEDULING ORDER: Motion to stay expert discovery is GRANTED. Motion for summary judgment due by 7/28/2006.. Subsequent motions/briefs to be filed in accordance with the RCFC. Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 06/26/2006)   |
| 07/27/2006 | <u>53</u> | Unopposed MOTION for Extension of Time until 08/31/06 to File Defendant's Dispositive Motion, filed by USA. Response due by 8/14/2006. (Schroeder, Richard) (Entered: 07/27/2006)  |
| 07/28/2006 | <u>54</u> | MOTION for Summary Judgment, filed by WILLIAM D. HOOKER. Response due by 8/28/2006. (Attachments: # <u>1</u> Exhibit List# <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u> # <u>10</u> # <u>11</u> # <u>12</u> # <u>13</u> # <u>14</u> # <u>15</u> # <u>16</u> # <u>17</u> # <u>18</u> # <u>19</u> # <u>20</u> # <u>21</u> # <u>22</u> # <u>23</u> # <u>24</u> # <u>25</u> # <u>26</u> # <u>27</u> # <u>28</u> # <u>29</u> )(Nichols, Berta) (Entered: 07/28/2006) |
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| 07/28/2006 | <u>55</u> | PROPOSED FINDINGS of Uncontroverted Fact RE: <u>54</u> MOTION for Summary Judgment, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 07/28/2006)  |
| 07/28/2006 |           | ORDER granting <u>53</u> Motion for Extension of Time. <b>Cross Motion/Response to Plaintiff's Motion due by 8/31/2006. Subsequent briefs to be filed in accordance with timing provisions of the RCFC.</b> Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 07/28/2006)  |
| 08/30/2006 | <u>56</u> | Unopposed MOTION for Extension of Time until 09/06/06 to respond to plaintiff's motion for summary judgment and file defendant's cross motion for summary judgment, filed by USA. Response due by 9/18/2006. (Schroeder, Richard) (Entered: 08/30/2006)   |
| 08/31/2006 |           | ORDER granting <u>56</u> Motion for Extension of Time. <b>Cross Motions due by 9/6/2006.</b> Signed by Judge Francis M. Allegra. (sil, ) (Entered: 08/31/2006)  |
| 09/06/2006 | <u>57</u> | MOTION for Extension of Time until September 7, 2006 to file Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment, filed by USA. Response due by 9/25/2006. (Schroeder, Richard) (Entered: 09/06/2006)   |
| 09/07/2006 |           | ORDER granting <u>57</u> Motion for Extension of Time. <b>Cross Motions due by 9/7/2006.</b> Signed by Judge Francis M. Allegra. (sil, ) (Entered: 09/07/2006)  |
| 09/07/2006 | <u>58</u> | MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , filed by USA. Response due by 10/10/2006. (Attachments: # <u>1</u> Affidavit Brooks Declaration# <u>2</u> Affidavit Crase Declaration# <u>3</u> Affidavit Hennessey Declaration# <u>4</u> Exhibit Hennessey Declaration Exh. 1# <u>5</u> Exhibit Hennessey Declaration Exh. 2# <u>6</u> Exhibit Hennessey Declaration Exh. 3)(Schroeder, Richard) (Entered: 09/07/2006)  |
| 09/07/2006 | <u>59</u> | PROPOSED FINDINGS of Uncontroverted Fact RE: <u>58</u> MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , filed by USA. (Schroeder, Richard) (Entered: 09/07/2006)  |
| 09/07/2006 | <u>60</u> | RESPONSE to <u>55</u> PROPOSED FINDINGS of Uncontroverted Fact, filed by USA. (Schroeder, Richard) (Entered: 09/07/2006)  |
| 09/07/2006 | <u>61</u> | <b>**STRUCK**NOTICE</b> , filed by USA re <u>58</u> MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , <i>Defendant's Appendix (Part I)</i> (Attachments: # <u>1</u> Exhibit A1-18# <u>2</u> Exhibit A9-A13# <u>3</u> Exhibit A14-A22# <u>4</u> Exhibit A23-A40# <u>5</u> Exhibit A41-A46a# <u>6</u> Errata A47-A64# <u>7</u> Exhibit A65# <u>8</u> Exhibit A66-A72# <u>9</u> Exhibit A73# <u>10</u> Exhibit A74-A87# <u>11</u> Exhibit A88# <u>12</u> Exhibit A89-A99# <u>13</u> Exhibit A100-A127a# <u>14</u> Exhibit A128-A129# <u>15</u> Exhibit A130-A146# <u>16</u> Exhibit A147-A149# <u>17</u> Exhibit A150-A150b# <u>18</u> Exhibit A151-A153# <u>19</u> Exhibit A154-A155# <u>20</u> Exhibit A156-A158# <u>21</u> Exhibit A159-A160# <u>22</u> Exhibit A161# <u>23</u> Errata A162a# <u>24</u> Exhibit A163-A165# <u>25</u> Exhibit A163a-A163b# <u>26</u> Exhibit A166-A168# <u>27</u> Exhibit A169-A177a# <u>28</u> Exhibit A173-A179# <u>29</u> Exhibit A180-A181# <u>30</u> Exhibit A182-A183# <u>31</u> Exhibit A184-A187# <u>32</u> Exhibit A189-A192# <u>33</u> Exhibit A193-A194# <u>34</u> Exhibit A195-A198a# <u>35</u> |

|            |           |  |
|------------|-----------|--|
|            |           | Exhibit A199-A200# <u>36</u> Exhibit A201-A203# <u>37</u> Exhibit A204-A218# <u>38</u><br>Exhibit A219-A241# <u>39</u> Exhibit A242-A244# <u>40</u> Exhibit A282-A285c# <u>41</u><br>Exhibit A286-A294# <u>42</u> Exhibit A295-A307d# <u>43</u> Exhibit A308-A314# <u>44</u><br>Exhibit A315-A316# <u>45</u> Exhibit A317-A320# <u>46</u> Exhibit A321-A339# <u>47</u><br>Exhibit A340-A341)(Schroeder, Richard) Modified on 9/11/2006 (mij, ).<br>(Entered: 09/07/2006) |
| 09/07/2006 | <u>62</u> | NOTICE, filed by USA , <i>Defendant's Appendix (Part II)</i> (Attachments: # <u>1</u><br>Exhibit A245-A264# <u>2</u> Exhibit A265-A281# <u>3</u> Exhibit A342)(Schroeder,<br>Richard) (Entered: 09/07/2006)  |
| 09/08/2006 | <u>63</u> | ORDER Striking <u>61</u> Notice (Other) pursuant to General Order No.<br>42A. <b>Defendant shall refile document by 10/15/2006.</b> Signed by Judge<br>Francis M. Allegra. (sil, ) (Entered: 09/08/2006)   |
| 09/15/2006 | <u>64</u> | NOTICE, filed by USA <i>Defendant's Appendix (Part I) and Index</i><br>(Attachments: # <u>1</u> Appendix # <u>2</u> Appendix # <u>3</u> Appendix # <u>4</u> Appendix # <u>5</u><br>Appendix # <u>6</u> Appendix # <u>7</u> Appendix # <u>8</u> Appendix)(Schroeder, Richard)<br>(Entered: 09/15/2006)  |
| 09/15/2006 | <u>65</u> | NOTICE, filed by USA <i>Defendant's Appendix Part III</i> (Attachments: # <u>1</u><br>Appendix A166-A192# <u>2</u> Appendix A193-A218# <u>3</u> Appendix A219-A244# <u>4</u><br>Appendix A282-A294# <u>5</u> Appendix A295-A307d# <u>6</u> Appendix A308-A316#<br><u>7</u> Appendix A317-A339# <u>8</u> Appendix A340-A341)(Schroeder, Richard)<br>(Entered: 09/15/2006)   |
| 09/20/2006 | <u>66</u> | STATUS REPORT, filed by USA. (Schroeder, Richard) (Entered:<br>09/20/2006)   |
| 10/10/2006 | <u>67</u> | MOTION to Strike <i>Declarations</i> , filed by WILLIAM D. HOOKER. <b>Response<br/>due by 10/27/2006.</b> (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> )(Nichols, Berta) (Entered:<br>10/10/2006)  |
| 10/10/2006 | <u>68</u> | RESPONSE to <u>59</u> PROPOSED FINDINGS of Uncontroverted Fact, filed by<br>WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 10/10/2006)  |
| 10/10/2006 | <u>69</u> | RESPONSE and reply to <u>58</u> MOTION for Summary Judgment <i>and<br/>Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , filed by<br>WILLIAM D. HOOKER. <b>Reply due by 10/27/2006.</b> (Nichols, Berta)<br>(Entered: 10/10/2006)  |
| 10/13/2006 | <u>70</u> | AMENDING ORDER and schedule. <b>Defendant may raised new issues by<br/>10/31/2006. Plaintiff may then file a surreply by 11/27/2006.</b> Signed by<br>Judge Francis M. Allegra. (sil, ) (Entered: 10/13/2006)  |
| 10/27/2006 | <u>71</u> | MOTION for Extension of Time to file response to plaintiff's motion to strike<br>and to file reply to plaintiff's response to defendant's cross-motion for<br>summary judgment, filed by USA. <b>Response due by 11/13/2006.</b> (Schroeder,<br>Richard) (Entered: 10/27/2006)   |
| 10/30/2006 | <u>72</u> | ORDER granting in part and denying in part <u>71</u> Motion for Extension of Time<br><b>Response to plaintiff's motion to strike due by 10/30/2006. Reply to<br/>plaintiff's response to defendant's cross-motion to dismiss due by<br/>11/3/2006.</b> Signed by Judge Francis M. Allegra. (sil, ) (Entered: 10/30/2006)   |

|            |           |   |
|------------|-----------|---|
| 10/30/2006 | <u>73</u> | RESPONSE to <u>67</u> MOTION to Strike <i>Declarations</i> , filed by USA. Reply due by <b>11/13/2006</b> . (Attachments: # <u>1</u> Exhibit (Appendix Part 1 pp. 1-2)# <u>2</u> Exhibit Appendix Part 2 (pp. 3-7))(Schroeder, Richard) (Entered: 10/30/2006)   |
| 11/03/2006 | <u>74</u> | Unopposed MOTION for Extension of Time to File Response or Reply as to <u>69</u> Response to Cross Motion [Dispositive], Response to Cross Motion [Dispositive], filed by USA. Response due by <b>11/20/2006</b> .(Schroeder, Richard) (Entered: 11/03/2006)  |
| 11/07/2006 |           | ORDER granting <u>74</u> Unopposed MOTION for Extension of Time to File Response or Reply as to <u>69</u> Response to Cross Motion [Dispositive], Response to Cross Motion [Dispositive]. Response due by <b>11/9/2006</b> . Signed by Judge Francis M. Allegra. (si1, ) (Entered: 11/07/2006)  |
| 11/09/2006 | <u>75</u> | REPLY to Response to Motion re <u>58</u> MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , filed by USA. (Attachments: # <u>1</u> Affidavit Second Declaration of Frankie Brooks) (Schroeder, Richard) (Entered: 11/09/2006)   |
| 11/10/2006 | <u>76</u> | REPLY to Response to Motion re <u>67</u> MOTION to Strike <i>Declarations</i> , filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 11/10/2006)  |
| 11/20/2006 | <u>77</u> | ORDER Setting Hearing on Motion <u>67</u> MOTION to Strike <i>Declarations</i> : <b>Motion Hearing set for 11/28/2006 at 10:00 AM in via Telephone before Judge Francis M. Allegra</b> . Signed by Judge Francis M. Allegra. (si1, ) (Entered: 11/20/2006)  |
| 11/27/2006 | <u>78</u> | SUR-REPLY re <u>70</u> Order, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 11/27/2006)  |
| 11/28/2006 | <u>79</u> | ORDER granting in part and denying in part <u>67</u> Motion to Strike. <b>Joint Status Report due January 19, 2007</b> . Signed by Judge Francis M. Allegra. (si1, ) (Entered: 11/28/2006)  |
| 01/19/2007 | <u>80</u> | JOINT STATUS REPORT, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 01/19/2007)   |
| 01/22/2007 |           | SCHEDULING ORDER: Revised response to defendant's proposed findings of uncontroverted fact due on or before <b>2/16/2007</b> Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 01/22/2007)   |
| 02/16/2007 | <u>81</u> | RESPONSE to <u>59</u> PROPOSED FINDINGS of Uncontroverted Fact, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 02/16/2007)  |
| 02/22/2007 | <u>82</u> | ORDER Setting Hearing on Motion <u>58</u> MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> , <u>54</u> MOTION for Summary Judgment: <b>Oral Argument set for 4/19/2007 10:00 AM in National Courts Building before Judge Francis M. Allegra</b> . Signed by Judge Francis M. Allegra. (si1, ) (Entered: 02/22/2007) |
| 03/28/2007 | <u>83</u> | ORDER Setting Hearing on Motion <u>54</u> MOTION for Summary Judgment, <u>58</u> MOTION for Summary Judgment <i>and Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> : <b>Oral Argument set for 4/17/2007 at 10:00 AM (EDT) in National Courts Building before Judge Francis M. Allegra</b> .  |

|            |           |  |
|------------|-----------|--|
|            |           | Signed by Judge Francis M. Allegra. (si1, ) (Entered: 03/28/2007)  |
| 04/17/2007 | <u>84</u> | ORDER denying <u>54</u> Motion for Summary Judgment; denying <u>58</u> Motion for Summary Judgment. <b>Joint Status Report due May 1, 2007.</b> Signed by Judge Francis M. Allegra. (si1, ) (Entered: 04/17/2007)  |
| 05/01/2007 | <u>85</u> | JOINT STATUS REPORT, filed by all parties. (Nichols, Berta) (Entered: 05/01/2007)  |
| 05/24/2007 | <u>86</u> | STATUS CONFERENCE ORDER:Status Conference set for <b>5/31/2007 10:00 AM via telephone before Judge Francis M. Allegra.</b> Signed by Judge Francis M. Allegra. (si1, ) (Entered: 05/24/2007)   |
| 05/31/2007 | <u>87</u> | PRETRIAL ORDER: Memorandum of Contentions of Fact and Law due by 7/16/2007. Exhibit List due by 7/16/2007. Witness List due by 7/16/2007. Opposing Exhibit List due by 8/17/2007. Opposing Witness List due by 8/17/2007. Pretrial Conference set for 8/28/2007 10:00 AM via telephone before Judge Francis M. Allegra. Trial set for 9/12/2007 10:00 AM Aiken, South Carolina before Judge Francis M. Allegra. Signed by Judge Francis M. Allegra. (si1, ) Additional attachment(s) added on 5/31/2007 (mij, ). (Entered: 05/31/2007) |
| 07/16/2007 | <u>88</u> | Memorandum of Contentions of Fact and Law, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 07/16/2007)  |
| 07/16/2007 | <u>89</u> | Exhibit List, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 07/16/2007)   |
| 07/16/2007 | <u>90</u> | Witness List, filed by WILLIAM D. HOOKER. (Nichols, Berta) (Entered: 07/16/2007)   |
| 08/09/2007 | <u>91</u> | ORDER REASSIGNING CASE to Judge Robert H. Hodges. Signed by Judge Francis M. Allegra. (Allegra, Francis) (Entered: 08/09/2007)   |
| 08/09/2007 | <u>92</u> | NOTICE of Reassignment. Case reassigned to Judge Robert H. Hodges, Jr. for all further proceedings. Judge Francis M. Allegra no longer assigned to the case. Signed by CLERK (mij, ) (Entered: 08/09/2007)   |
| 08/17/2007 | <u>93</u> | SCHEDULING ORDER:Response due by 8/24/2007. Exhibit List due by 8/24/2007. Witness List due by 8/24/2007. Signed by Judge Robert H. Hodges Jr. (CLB) (Entered: 08/17/2007)   |
| 08/24/2007 | <u>94</u> | Witness List, filed by USA. (Schroeder, Richard) (Entered: 08/24/2007)   |
| 08/24/2007 | <u>95</u> | NOTICE, filed by USA <i>Defendant's Response to Plaintiff's Contentions of Fact and Law</i> (Schroeder, Richard) (Entered: 08/24/2007)   |
| 08/24/2007 | <u>96</u> | NOTICE, filed by USA <i>Defendant's Contentions of Fact</i> (Schroeder, Richard) (Entered: 08/24/2007)   |
| 08/24/2007 | <u>97</u> | Exhibit List, filed by USA. (Schroeder, Richard) (Entered: 08/24/2007)   |
| 08/28/2007 | <u>98</u> | ORDER - confirming trial for September 12 - 14 in Aiken, SC. Signed by Judge Robert H. Hodges Jr. (SWF) (Entered: 08/28/2007)  |
|            |           |  |

|            |            |  |
|------------|------------|--|
| 10/17/2007 | 99         | TRANSCRIPT of Proceedings (pages 1-463) held on September 12, 2007 before Judge Robert H. Hodges, Jr.. (dwl) (Entered: 10/18/2007)                                 |
| 11/28/2007 | <u>100</u> | This Opinion is PUBLISHED. The Clerk is directed to enter judgment. Signed by Judge Robert H. Hodges Jr. (mc3) (Entered: 11/28/2007)                               |
| 11/30/2007 | <u>101</u> | JUDGMENT entered, pursuant to Rule 58, that judgment is in favor of defendant and the complaint is dismissed. No costs. (lld) (Entered: 11/30/2007)                |
| 01/25/2008 | <u>102</u> | NOTICE OF APPEAL, filed by WILLIAM D. HOOKER. Filing fee \$ 455.00, receipt number 067605. Copies to judge, opposing party and CAFC. (hw1, ) (Entered: 01/25/2008) |
| 03/27/2008 | 103        | CAFC Case Number 08-5059 for 102 Notice of Appeal filed by WILLIAM D. HOOKER. (hw1, ) (Entered: 03/27/2008)  |

| PACER Service Center   |               |                         |                   |
|------------------------|---------------|-------------------------|-------------------|
| Transaction Receipt    |               |                         |                   |
| 05/06/2008 12:47:43    |               |                         |                   |
| <b>PACER Login:</b>    | lu0009        | <b>Client Code:</b>     |                   |
| <b>Description:</b>    | Docket Report | <b>Search Criteria:</b> | 1:03-cv-01501-RHH |
| <b>Billable Pages:</b> | 8             | <b>Cost:</b>            | 0.64              |

APPEAL, CLOSED, ECF, MEMBER

**US Court of Federal Claims  
United States Court of Federal Claims (COFC)  
CIVIL DOCKET FOR CASE #: 1:04-cv-01126-FMA**

HOOKER v. USA  
Assigned to: Judge Francis M. Allegra  
Demand: \$80,000  
Lead case: [1:03-cv-01501-RHH](#)  
Member case: ([View Member Case](#))  
Cause: 28:1491 Tucker Act

Date Filed: 07/07/2004  
Date Terminated: 11/30/2007  
Jury Demand: None  
Nature of Suit: 114 Contract - Service (CDA)  
Jurisdiction: U.S. Government  
Defendant

**Plaintiff**

**WILLIAM D. HOOKER**  
*d/b/a GEORGIA BOWHUNTERS  
SUPPLY*

represented by **Berta E. Nichols**  
Robbie M. Nichols, Attorney  
206 Carolina Building  
P.O. Box 7925  
Hilton Head Island, SC 29938  
(843) 686-5884  
Fax: 843-842-3933  
Email: [robbie@hargray.com](mailto:robbie@hargray.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

USA

represented by **Lindsay E. Williams**  
U. S. Department of Justice  
1100 L Street  
Washington, DC 20530  
(202) 353-7995  
Fax: (202)514-8624  
Email: [Lindsay.Williams@usdoj.gov](mailto:Lindsay.Williams@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

| Date Filed | #        | Docket Text  |
|------------|----------|--|
| 07/07/2004 | <u>1</u> | COMPLAINT against USA (AGR), filed by WILLIAM D. HOOKER. Answer Due by 9/7/2004. (Attachments: # 1 Civil Cover Sheet)(dw1) (Entered: 07/08/2004) |
|            |          |  |

|            |           |  |
|------------|-----------|--|
| 07/07/2004 | <u>2</u>  | NOTICE of Directly Related Case(s) [03-1501C] by WILLIAM D. HOOKER. Service: 7/7/04.(dw1) (Entered: 07/08/2004)  |
| 07/07/2004 | 3         | NOTICE of Assignment to Judge Francis M. Allegra. (dw1) (Entered: 07/08/2004)  |
| 07/07/2004 | 4         | NOTICE of Designation of Electronic Case. (dw1) (Entered: 07/08/2004)  |
| 07/19/2004 | 5         | NOTICE of Appearance by Lindsay E. Williams for USA. (Williams, Lindsay) (Entered: 07/19/2004)   |
| 07/21/2004 | 6         | SPECIAL PROCEDURES ORDER. Signed by Judge Francis M. Allegra. (sil, ) (Entered: 07/21/2004)  |
| 07/23/2004 | 7         | ORDER directing the Clerk to consolidate this case with the previously filed matter, No. 03-1501C. Signed by Judge Francis M. Allegra. (sil, ) (Entered: 07/23/2004) |
| 09/07/2004 | 8         | ANSWER to <u>1</u> Complaint by USA. JPSR due by 10/29/2004.(Williams, Lindsay) (Entered: 09/07/2004)  |
| 10/29/2004 | <u>9</u>  | JOINT PRELIMINARY STATUS REPORT. (Williams, Lindsay) (Entered: 10/29/2004)   |
| 11/30/2007 | <u>11</u> | JUDGMENT ENTERED, see 03-1501 (lld) (Entered: 01/25/2008)  |
| 01/24/2008 | <u>10</u> | Remark: See Lead case 03-1501 C for the Notice of Appeal. (hw1, ) (Entered: 01/25/2008)  |

|                             |               |                         |                   |
|-----------------------------|---------------|-------------------------|-------------------|
| <b>PACER Service Center</b> |               |                         |                   |
| <b>Transaction Receipt</b>  |               |                         |                   |
| 05/06/2008 12:48:37         |               |                         |                   |
| <b>PACER Login:</b>         | lu0009        | <b>Client Code:</b>     |                   |
| <b>Description:</b>         | Docket Report | <b>Search Criteria:</b> | 1:04-cv-01126-FMA |
| <b>Billable Pages:</b>      | 1             | <b>Cost:</b>            | 0.08              |

SOLICITATION, OFFER AND AWARD

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 60 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)  
 10 CALENDAR DAYS    20 CALENDAR DAYS    30 CALENDAR DAYS    6 CALENDAR DAYS  
0 %                      0 %                      0 %                      0 %

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:

|               |                    |               |      |
|---------------|--------------------|---------------|------|
| AMENDMENT NO. | DATE               | AMENDMENT NO. | DATE |
| <u>NO. 1</u>  | <u>Sep 19-1997</u> |               |      |

|                                  |      |          |   |
|----------------------------------|------|----------|---|
| 15A. NAME AND ADDRESS OF OFFEROR | CODE | FACILITY | 16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) |
| <u>Ex. Bow Hunter Supply Co</u>  |      |          | <u>William Denny Hooker</u>   |
| <u>3623 Fench Orchard Rd</u>     |      |          |   |
| <u>Augusta, GA 31906</u>         |      |          |   |

15B. TELEPHONE NO. (Include Area Code)    15C. CHECK IF REMITTANCE ADDRESS IS  
706-792-9422     DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE

17. SIGNATURE: W.D. Hooker    18. OFFER DATE: 10-1-97

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED 01 Base Period    20. AMOUNT Per Each Task Order    21. ACCOUNTING AND APPROPRIATION Per Each Task Order  
 22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:  
 10 U.S.C. 2304(c)     41 U.S.C. 253(c)

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ITEM 8  
 (4 copies unless otherwise specified)

24. ADMINISTERED BY CODE (If other than Item 7)    25. PAYMENT WILL BE MADE BY CODE  
 USDA FOREST SERVICE - SRFS  
 BLDG 760-G  
 1-MILE INSIDE AIKEN BARRICADE  
 AIKEN, SC 29802

|   |  |                 |
|---|--|-----------------|
| 26. NAME OF CONTRACTING OFFICER (Type or Print) | 27. UNITED STATES OF AMERICA                                 | 28. AWARD DATE  |
| <u>HOMER R. GABARD</u>                          | <u>Homer R. Gabard</u><br>(Signature of Contracting Officer) | <u>10/29/97</u> |

IMPORTANT - Award will be made on this Form or on Standard Form 26, or by other authorized official written notice.

## PART I - THE SCHEDULE

## SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS

| Item No. | Supplies/Services   | ESTIMATED Quantity | Unit | Unit Price            | Total               |
|----------|---|--------------------|------|-----------------------|---------------------|
| 01       | BASE PERIOD (12 MO)<br>TRAP AND DISPATCH<br>FERAL HOGS<br>(ESTIMATED)     |                    |      |                       |                     |
|          | Min quantity  | 200                | EA   | \$ <u>55.00</u>       | \$ <u>11,000.00</u> |
|          | Max quantity  | 800                | EA   | \$ <u>55.00</u>       | \$ <u>44,000.00</u> |
|          |   |                    |      | TOTAL BASE PERIOD     | \$ <u>55,000.00</u> |
| 01       | OPTION PERIOD 1 (12 MO)<br>TRAP AND DISPATCH<br>FERAL HOGS<br>(ESTIMATED) |                    |      |                       |                     |
|          | Min quantity  | 200                | EA   | \$ <u>55.00</u>       | \$ <u>11,000.00</u> |
|          | Max quantity  | 800                | EA   | \$ <u>55.00</u>       | \$ <u>44,000.00</u> |
|          |   |                    |      | TOTAL OPTION PERIOD 1 | \$ <u>55,000.00</u> |
| 01       | OPTION PERIOD 2 (12 MO)<br>TRAP AND DISPATCH<br>FERAL HOGS<br>(ESTIMATED) |                    |      |                       |                     |
|          | Min quantity  | 200                | EA   | \$ <u>55.00</u>       | \$ <u>11,000.00</u> |
|          | Max quantity  | 800                | EA   | \$ <u>55.00</u>       | \$ <u>44,000.00</u> |
|          |   |                    |      | TOTAL OPTION PERIOD 2 | \$ <u>55,000.00</u> |

B.1 MINIMUM AND MAXIMUM CONTRACT AMOUNTS (AGAR 452.216-73)  
(FEB 1988)

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totaling a minimum of 200 EACH, but not in excess of 800 EACH.

NOTICE:

Savannah River Site is a restricted access Government facility and only United States citizens are authorized entry to the Site.

Contractor and all personnel using firearms on the contract must

|  |   |                                   |                         |   |
|--|---|-----------------------------------|-------------------------|---|
| AMENDMENT OF SOLICITATION/<br>MODIFICATION OF CONTRACT                 |   | 1. CONTRACT ID CODE               |                         | PAGE 1 of 2<br>PAGES                      |
| 2. AMENDMENT MODIFICATION NO.  | 01  | 3. EFFECTIVE DATE                 | 08 06.98                | 4. REQUISITION PURCHASE REQ. #            |
| 6. ISSUED BY   | USDA, FOREST SERVICE<br>SAVANNAH RIVER INSTITUTE<br>P.O. BOX 700<br>NEW ELLENTON, SC 29809-0700 | CODE                              |                         | 7. ADMINISTERED BY (If other than Item 6) |
| 8. NAME & ADDRESS OF CONTRACTOR (No. street, county, state & zip code) |   | 9A. AMENDMENT OF SOLICITATION NO. | 9B. DATED (SEE ITEM 11) |   |
| GA BOWHUNTER SUPPLY CO.,<br>5330 COLUMBIA ROAD<br>GROVETOWN, GA 30813  |   |                                   |                         |   |
| 10A. MODIFICATION OF CONTRACT ORDER NO.                                | 53-4660-8-04  | 10B. DATED (SEE ITEM 13)          | CODE                    | FACILITY CODE                             |
|  |   | 10/29/97                          |                         |   |

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended.  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.** If by virtue of this amendment you desire to change an offer submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)****13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.****IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

|                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.   |
| <input type="checkbox"/>            | B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14. PURSUANT TO THE AUTHORITY OF FAR 43.103(b) |
| <input checked="" type="checkbox"/> | C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a) FAR 43.102(a)   |
| <input type="checkbox"/>            | D. OTHER (Specify type of modification and authority)  |

**E. IMPORTANT:** Contractor  is not.  is required to sign this document and return 1 copies to the issuing office.

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation contract subject matter where feasible.)**

Please refer to Page 7, Part I, Section B, and change the maximum quantity for the Base Period as shown on page 2 of this modification.

EXCEPT AS PROVIDED HEREIN ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN 9A OR 10A AS HITHERTOFORF CHANGED REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

|   |   |                  |
|---|---|------------------|
| 15A. NAME AND TITLE OF SIGNER (Type/Print)              | 15B. CONTRACTOR/OFFEROR (Person authorized to sign) | 15C. DATE SIGNED |
| <i>W.D. Hood</i>  | <i>W.D. Hood</i>                                    | 8-26-98          |
| 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type/Print) | 16B. UNITED STATES OF AMERICA (Contracting Officer) | 16C. DATE SIGNED |
| HOMER R. GABARD, Contracting Officer                    | <i>Homer R. Gabard</i>                              | 9/1/98           |

|  |                                |   |   |                                |
|--|--------------------------------|---|---|--------------------------------|
| AMENDMENT OF SOLICITATION/<br>MODIFICATION OF CONTRACT   |                                | 1. CONTRACT ID CODE                                 |   | PAGE 1 of 1<br>PAGES           |
| 2. AMENDMENT/MODIFICATION NO.  | 02                             | 3. EFFECTIVE DATE                                   | 10/01 98                                  | 4. REQUISITION PURCHASE R.C. # |
| 6. ISSUED BY<br>USDA, FOREST SERVICE<br>SAVANNAH RIVER INSTITUTE<br>P.O. BOX 700<br>NEW ELLENTON, SC 29809-0700  |                                | CODE  | 7. ADMINISTERED BY (if other than Item 6) |                                |
| 8. NAME & ADDRESS OF CONTRACTOR (No. street, county, state & zip code)<br>GA BOWHUNTER SUPPLY CO.<br>5330 COLUMBIA ROAD<br>GROVETOWN, GA 30813   |                                | 9A. AMENDMENT OF SOLICITATION NO.                   |   | 9B. DATED (SLI ITEM 11)        |
| 10A. MODIFICATION OF CONTRACT ORDER NO. 53-4660-8-04   | 10B. DATED (SLI ITEM 13), CODE |   | FACILITY CODE                             |                                |
|  |                                | 10/29/97  |   |                                |
| <b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION</b>  |                                |   |   |                                |
| <p><input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p> |                                |   |   |                                |
| 12. ACCOUNTING AND APPROPRIATION DATA (if required)  |                                |   |   |                                |
| <b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS, ORDERS.</b>   |                                |   |   |                                |
| IT MODIFIES THE CONTRACT ORDER NO. AS DESCRIBED IN ITEM 14.  |                                |   |   |                                |
| <p><input type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.</p> <p><input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation code, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)</p> <p><input checked="" type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.217-9, AGAR CLAUSE 452.217-8.</p> <p><input type="checkbox"/> D. OTHER (Specify type of modification and authority)</p>   |                                |   |   |                                |
| <b>E. IMPORTANT:</b> Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.   |                                |   |   |                                |
| 14. DESCRIPTION OF AMENDMENT/MODIFICATION (Attach a copy of contract or modification contract subject matter where feasible.)  |                                |   |   |                                |
| THE CONTRACT IS HEREBY RENEWED BY THE FOREST SERVICE FOR THE OPTION PERIOD FOR THE PERIOD OCTOBER 1, 1998 TO SEPTEMBER 30, 1999  |                                |   |   |                                |
| EXCEPT AS PROVIDED HEREIN ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN 9A OR 9B AS HERETOFORE CHANGED REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.  |                                |   |   |                                |
| 15A. NAME AND TITLE OF SIGNER (Type/Print)   |                                | 15B. CONTRACTOR OFFICER (Person authorized to sign) |   | 15C. DATE SIGNED               |
| <i>W.D. Hooker</i>   |                                | <i>W.D. Hooker</i>                                  |   | 10-1-98                        |
| 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type/Print)  |                                | 16B. UNITED STATES OF AMERICA                       |   | 16C. DATE SIGNED               |
| HOMER R. GABARD, Contracting Officer   |                                | BY: <i>Homer R. Gabard</i>                          |   | 10/2/98                        |

| AMENDMENT OF SOLICITATION/<br>MODIFICATION OF CONTRACT   |              | 1. CONTRACT ID CODE               |          | PAGE 1 of 1<br>PAGES                      |                              |
|--|--------------|-----------------------------------|----------|---|------------------------------|
| 2. AMENDMENT/MODIFICATION NO.  | 04           | 3. EFFECTIVE DATE                 | 10/01/99 | 4. REQUISITION/PURCHASE REQ. #            | 5. PROJECT # (if applicable) |
| 6. ISSUED BY<br>USDA, FOREST SERVICE<br>SAVANNAH RIVER INSTITUTE<br>P.O. BOX 700<br>NEW ELLENTON, SC 29809-0700                                |              | CODE                              |          | 7. ADMINISTERED BY (if other than item 6) | CODE                         |
| 8. NAME & ADDRESS OF CONTRACTOR (No. street, county, state & zip code)<br>GA BOWHUNTER SUPPLY CO.<br>5330 COLUMBIA ROAD<br>GROVETOWN, GA 30813 |              | 9A. AMENDMENT OF SOLICITATION NO. |          | 9B. DATED (SEE ITEM 11)<br>August 9, 1999 |                              |
| 10A. MODIFICATION OF CONTRACT  | 53-4660-8-04 | 10B. DATED (SEE ITEM 13)          | 10/29/97 | CODE                                      | FACILITY CODE                |

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION**

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended. [ ] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)****13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

|                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (FAR 52.243-1) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.  |
| <input type="checkbox"/>            | B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14. PURSUANT TO THE AUTHORITY OF FAR 43.103(b) |
| <input checked="" type="checkbox"/> | C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a), FAR 52.217-9, AGAR Clause 452.217-8  |
| <input type="checkbox"/>            | D. OTHER (Specify type of modification and authority) Disclosure of the magnitude of construction projects   |

**E. IMPORTANT:** Contractor [ ] is not, [X] is required to sign this document and return 1 copies to the issuing office.

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation contract subject matter where feasible.)**

**CONTRACT IS EXTENDED TO OCTOBER 31, 1999, OR UNTIL A NEW CONTRACT IS AWARDED.**

EXCEPT AS PROVIDED HEREIN ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN 9A OR 10A AS HERETOFORE CHANGED REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

|  |  |                                   |
|--|--|-----------------------------------|
| 15A. NAME AND TITLE OF SIGNER (Type/Print)<br><i>H. D. Hester owner</i>                                | 15B. CONTRACTOR/OFFEROR<br>(Person authorized to sign)<br><i>H. D. Hester</i>        | 15C. DATE SIGNED<br><i>9/4/99</i> |
| 16A. NAME AND TITLE OF CONTRACTING OFFICER<br>(Type/Print)<br><br>HOMER R. GABARD, Contracting Officer | 16B. UNITED STATES OF AMERICA<br>BY: (Contracting Officer)<br><i>Homer R. Gabard</i> | 16C. DATE SIGNED<br><i>9/2/99</i> |

United States  
Department of  
Agriculture  
Forest Service

FOREST SERVICE CONTRACT  
OMB CLEARANCE NUMBER 05050005

CONTRACT NO.

53-4660-9-06

---

PROJECT: BEAVER TRAPPING AND MAINTENANCE OF CULVERT INLETS AND OUTLETS

---

LOCATION: SAVANNAH RIVER NATURAL RESOURCE MANAGEMENT AND RESEARCH INSTITUTE

---

CONTRACTOR: GA BOWHUNTER SUPPLY CO.,  
5330 COLUMBIA ROAD  
GROVETOWN, GA 30813

(706)792-9422

---

AWARDING OFFICE: USDA FOREST SERVICE  
P.O. BOX 700  
NEW ELLENTON, SC 29809

SOLICITATION, OFFER AND AWARD

Page 1 of 2 Pages

1. This contract is a rated order under DPAS (15 CFR 350) RATING:

|                                 |                                    |   |
|---------------------------------|------------------------------------|---|
| 2. CONTRACT NO.<br>53-4660-9-06 | 3. SOLICITATION NO.<br>R8-36-99-05 | 4. TYPE OF SOLICITATION<br>[ ] SEALED BID (IFB)<br>[X] NEGOTIATED (RFP) |
|---------------------------------|------------------------------------|---|

|                            |                                  |
|----------------------------|----------------------------------|
| 5. DATE ISSUED<br>11/24/98 | 6. REQUISITION/PURCHASE REQ. NO. |
|----------------------------|----------------------------------|

|   |      |  |
|---|------|--|
| 7. ISSUED BY<br>USDA FOREST SERVICE<br>1-MILE INSIDE AIKEN BARRICADE, SRS<br>BLDG. 760-15G<br>AIKEN, SC 29802 | CODE | 8. ADDRESS OFFER TO<br>(If other than Item 7)<br>USDA FOREST SERVICE<br>SAVANNAH RIVER INSTITUTE<br>P.O. BOX 700<br>NEW ELLENTON, SC 29809 |
|---|------|--|

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

SOLICITATION

9. Sealed offers in original and 0 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in Item 7, until 4:00 P.M. local time on 12/23/98. CAUTION-LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

|  |                             |  |
|--|-----------------------------|--|
| 10. FOR INFORMATION CALL:                            | A. NAME:<br>HOMER R. GABARD | B. TELEPHONE NO. (Include Area Code)<br>(NO COLLECT CALLS, (803) 725-0239) |
| C. EMAIL ADDRESS: hgabard/r8_savannahriver fs.fed.us |                             |  |

| X SEC | 11. TABLE OF CONTENTS<br>DESCRIPTION                             | PAGE(S) |
|-------|--|---------|
|       | PART I - THE SCHEDULE  |         |
| A     | SOLICITATION/CONTRACT FORM                                       |         |
| B     | SUPPLIES OR SERVICES AND PRICES/COSTS                            |         |
| C     | DESCRIPTION/SPECIFICATIONS/WORK STATEMENT                        |         |
| D     | PACKAGING AND MARKING  |         |
| E     | INSPECTION AND ACCEPTANCE  |         |
| F     | DELIVERIES OR PERFORMANCE  |         |
| G     | CONTRACT ADMINISTRATION DATA                                     |         |
| H     | SPECIAL CONTRACT REQUIREMENTS                                    |         |
|       | PART II - CONTRACT CLAUSES                                       |         |
| I     | CONTRACT CLAUSES   |         |
|       | PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS     |         |
| J     | LIST OF ATTACHMENTS  |         |
|       | PART IV - REPRESENTATIONS AND INSTRUCTIONS                       |         |
| K     | REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS |         |
| L     | INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS                |         |
| M     | EVALUATION FACTORS FOR AWARD                                     |         |



OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provision at 52.214-16, Minimum Bid Acceptance Period.  
EXCEPTION TO STANDARD FORM 33 (REV. 9-97) Prescribed by GSA FAR (48 CFR) 53.214(c)

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 60 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)  
 10 CALENDAR DAYS 2%    20 CALENDAR DAYS 0%    30 CALENDAR DAYS 0%    60 CALENDAR DAYS 0%

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:

| AMENDMENT NO. | DATE          | AMENDMENT NO.   | DATE            |
|---------------|---------------|-----------------|-----------------|
| <u>N/A</u>    | <u>W.D.H.</u> | <u>12-11-98</u> | <u>W.D.H.</u>   |
|               |               | <u>12-15-98</u> | <u>12-15-98</u> |

15A. NAME AND ADDRESS OF OFFEROR: Ga. Rowhunting Supply Co  
5330 Columbia Road  
Graves Tower GA 30812

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print): W. D. HOOKER

15B. TELEPHONE NO. (Include Area Code): 706-869-8226 Home  
706-792-9422 OFFICE

15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE: N/A

17. SIGNATURE: William D. Hooker

18. OFFER DATE: 12-11-98

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED All 20. AMOUNT Per task order 21. ACCOUNTING AND APPROPRIATION Per task order

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:  
 10 U.S.C. 2304(c) ( )     41 U.S.C. 253(c) ( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ITEM 08  
 (4 copies unless otherwise specified)

24. ADMINISTERED BY (If other than Item 7) CODE: \_\_\_\_\_

25. PAYMENT WILL BE MADE BY CODE: \_\_\_\_\_  
 USDA FOREST SERVICE - SRFS  
 BLDG 760-G  
 1-MILE INSIDE AIKEN BARRICADE  
 AIKEN, SC 29802

26. NAME OF CONTRACTING OFFICER (Type or Print): HOMER R. GABARD

27. UNITED STATES OF AMERICA (Signature of Contracting Officer): Homer R. Gabard

28. AWARD DATE: 1/22/1999

IMPORTANT - Award will be made on this Form or on Standard Form 26, or by other authorized official written notice.

EXCEPTION TO STANDARD FORM 33 (REV.9-97)

## PART I - THE SCHEDULE

## SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS

## SCHEDULE OF ITEMS \*

| Item No.           | Supplies/Services   | Quantity | Unit | Unit Price   | Amount                    |
|--------------------|---|----------|------|--------------|---------------------------|
| 01                 | TRAP BEAVER IN ACCORDANCE WITH THE SPECIFICATIONS AND ATTACHMENTS                     | 700      | EA   | <u>45.00</u> | <u>31,500</u>             |
| 02                 | MAINTAIN CULVERT OUTLETS AND INLETS IN ACCORDANCE WITH SPECIFICATIONS AND ATTACHMENTS | 1100     | HR   | <u>18.00</u> | <u>19,800</u>             |
| TOTAL BASE PERIOD: |   |          |      | \$           | <u>51,300</u> <i>with</i> |

## OPTION PERIOD I

| Item No. | Supplies/Services   | Quantity | Unit | Unit Price   | Amount        |
|----------|---|----------|------|--------------|---------------|
| 01       | TRAP BEAVER IN ACCORDANCE WITH THE SPECIFICATIONS AND ATTACHMENTS                     | 700      | EA   | <u>45.00</u> | <u>31,500</u> |
| 02       | MAINTAIN CULVERT OUTLETS AND INLETS IN ACCORDANCE WITH SPECIFICATIONS AND ATTACHMENTS | 1100     | HR   | <u>18.00</u> | <u>19,800</u> |

TOTAL OPTION PERIOD I: \$

51,300

NOTICE:

TOTAL BASE PERIOD AND OPTION PERIOD: \$ 102,600.00 *with*

Savannah River Site is a restricted access Government facility and only United States citizens are authorized entry to the Site.

## TASK ORDERS

This is a requirements contract for the period from date of contract award to December 31, 1999 for the base period; and

## GENERAL SPECIFICATIONS

### A. Scope of Contract

The contractor shall furnish all labor, materials, supervision, transportation, equipment, supplies (including safety), and safely perform all work necessary to remove beaver from problem areas and maintain open and free flowing culverts at the Savannah River Site (SRS). Problem areas include areas where beaver activity has resulted in severe flooding of timber, research sites, roads and railroads. The importance of beaver dams as a wetlands resource, particularly as an attractive habitat for waterfowl, is recognized by the Forest Service. Therefore, selective trapping will be conducted only in critical areas identified by the Savannah River Institute (SRI).

### B. Description and Location

All areas are located within the boundaries of the Department of Energy's Savannah River Site near Aiken, SC in Aiken, Barnwell, and Allendale counties, South Carolina.

The contractor will choose 2 barricades to enter and leave the SRS during the contract period. The contractor will use only these barricades when entering and leaving the SRS. Perimeter gates or other barricades will not be utilized by the contractor during the contract period.

## TECHNICAL SPECIFICATIONS

### A. Beaver Trapping

The contractor must trap beaver from problem areas on-site during a twelve month period (from date of contract award to December 31, 1999) and during an additional 12 month period if the Government extends the term of the contract (1/01/2000 to 12/31/2000). The contractor will be on call during the year to trap beaver whenever problem sites are discovered. The contractor will only trap the areas designated by the Contracting Officer's Representative (COR), Inspector(s), or Contracting Officer (CO). The contractor may trap 24 hours a day, seven days a week.

#### **The contractor shall:**

1. Use Conibear #330 traps for trapping (recommended by South Carolina Department of Natural Resources (SCDNR)). These traps kill quickly, and are selective in the sense that they can be set in water. However, when the traps are placed in water, they must be readily identifiable to others. The contractor must not purposely trap any species other than beaver. The contractor will notify the COR, Inspector(s), or CO of offer, furtles, or other species trapped incidentally. When other animals are trapped the contractor shall follow the same procedures as stated below for beaver carcasses.  
  
Snares with .22 caliber weapons may be used in some locations, but only as directed by the COR or CO.
2. Tag each carcass prior to placing it in the SRI cooler. The tag shall show the date and location of capture as well as the date and time the carcass was placed in the cooler.
3. Deliver each whole beaver carcass (not field stripped) to the SRI work center cooler at the end of each workday in order to receive credit for payment. The contractor will not remove animals, dead or alive, from the SRS at any time.
4. Determine sex and weight of each beaver taken.
5. Enter the following information on the data sheet/map for each carcass: the date and location of capture, sex, weight, and the date and time the carcass was placed in the SRI cooler.
6. Twice per week remove all beaver carcasses, not designated for research, from the SRI cooler and deliver them to the designated landfill at the SRS where the carcasses will be logged in with the landfill operator.
7. Thoroughly clean the SRI cooler by removing all beaver and other animal body parts, fluids, associated odor when necessary, or as directed by the COR or CO. Depending on the types of chemicals used to clean the cooler, the contractor may be required to provide a hazardous communication plan with a listing of appropriate personal protective equipment. The contractor will provide this information as directed by the COR.
8. If requested by the COR, cooperate with researchers' requests for data and/or information.

## B. Culvert Maintenance

SRI engineering personnel will initially clean and open culverts blocked by beaver dams and debris. Initial cleaning shall remove dam and debris material to the bottom of the culvert. When possible, engineering personnel shall notify the COR of the date and time planned for cleaning the culvert(s), so the contractor can be present for the initial cleaning. If this is not possible, engineering personnel will notify the COR after completing the work, and the COR will inform the contractor of the location of the culvert(s).

1. The contractor shall have 72 hours from the time of the initial cleaning to assume responsibility for the culvert(s).
2. The contractor shall notify the COR or inspector(s) when he/she has begun cleaning the culvert(s). The contractor shall check the culvert(s) when checking traps or snares, and clean culverts as necessary.
3. The contractor shall assume responsibility for maintaining each culvert's inlet and outlet. Water shall flow through each culvert at the time beaver traps or snares are introduced into the area. The contractor shall continue to maintain the inlet and outlet of each culvert until beaver traps or snares are removed as directed by the COR.

## C. Safety

Safety equipment the contractor shall be required to have and use is listed below. This list may not be all inclusive, and other equipment may be required as directed by SRI and DOE safety personnel and/or OSHA requirements. At least one safety inspection shall be conducted of the contractor's operations by SRI and/or DOE safety personnel to insure compliance with the OSHA regulations and safety requirements of this contract. All equipment shall be in proper working order.

1. First Aid Kits approved by a consulting physician.
2. A means of communication such as a CB radio, cellular phone, or 2-way radio shall be at site at all times where the contractor's personnel are working.
3. 8" lace-up boots with slip resistant soles for each employee.
4. Hard hat and eye protection for each employee.

No toxicological hazards are associated with trapping beaver at SRS; however, normal environmental and physical hazards such as snakes and uncertain footing do exist.

## INSPECTION AND ACCEPTANCE

### A. Inspection

Inspection of work performance under this contract shall be made by the COR or Inspector (s) at such intervals as are necessary to insure compliance with the contract specifications and provisions.

The COR and Inspector(s) shall periodically inspect culverts the contractor is maintaining. Any culvert(s) found with restricted water flow due to beaver dam or debris that has been allowed to accumulate for more than 48 hours shall be removed at the contractor's expense.

### B. Unsatisfactory Work

In the event any of the work does not meet the specifications, through the fault or negligence of the contractor, such work shall, upon request of the COR or CO, be made to conform to the specifications by the contractor at his/her expense. Cost of re-inspection by the Government will be charged to the contractor.

### C. Payment

**Line Item 1, Beaver Trapping:** The contractor will be paid a bounty per beaver trapped and delivered to the SRI.

**Line Item 2, Culvert Cleaning:** The COR and Inspector(s) shall know how many culverts the contractor is responsible for maintaining, and the approximate amount of time required to clean each culvert. The contractor shall be paid the hourly rate for time spent satisfactorily maintaining the inlet and outlet of the culverts so that water flows freely.

At the end of each month the contractor shall submit an invoice to the COR for the number of beaver trapped, and the total number of hours spent cleaning culverts.

# Work Clearance Permit

*Don't do this w/ it 5 min.*

WCP Must Be Reviewed (Section 4) and Authorized (Section 5) Prior to Start of Work

## Section 1 - Job Description (Initiator completes blocks 1A, 1B, 1C, 1D, 1E, 1G, and Shift Manager completes block 1F)

|  |  |
|--|--|
| 1A. WCP Initiator (Name, Signature, Job Title, Phone/Fax)<br>TIM L. MCCORMICK, <i>Tim L. McCormick</i> MANAGER, 557-4756/18627 |  |
| 1B. Equipment/Component Identification<br>FOUR MILE CREEK BRIDGE   | 1E. MWV No./Work Package No./Procedure No.   |
| 1C. Location<br>FOUR MILE CREEK AND ROAD 4   | 1F. Authorized Duration <u>2/22/99 1200</u> to <u>3/22/99 1500</u><br><small>Date/Time Date/Time</small> |
| 1D. LT Plan No.<br>N/A   | Extended To _____<br><small>Date/Time/Day Date/Time/Day</small>  |

### 1G. Describe The Work To Be Performed On The Permit

ENTER FOUR MILE CREEK NEAR ROAD 4 BRIDGE TO INSTALL BEAVER TRAPS.

NOTE: PERSON ENTERING CREEK IS RAD II QUALIFIED AND A SUBCONTRACTOR TO SAVANNAH RIVER INSTITUTE AFTER ENTERING CREEK RAD CON OPS. WILL SURVEY PROTECTIVE EQUIPMENT, WADERS, GLOVES, ECT.

*Standby person required + personal rotation device*

*Use water can to rinse off waders in a plastic bag RAD Survey*

## Section 2 - Hazards Screen (To be completed by Initiator. Check activities involved in job. A numerical listing of potentially applicable Safety Requirements/Compensatory Measures to be evaluated in Section 3 are provided in the brackets. Reviewers may add items).

|  | References                |
|--|---------------------------|
| <b>Common Hazards</b>  | 8Q Other Manuals          |
| <input type="checkbox"/> Hazardous Energy (1, 2, 3, 4, 5, 7, 8, 9, 10, 21, 33, 60, 63, 65)   | 32 18Q, 2S                |
| <input type="checkbox"/> Electrical (1, 2, 15, 16, 17, 18, 19, 20, 21, 25, 29, 33, 40, 63, 65)   | 25 18Q                    |
| <input type="checkbox"/> Power Source Fully De-energized, Job and Proximity  |                           |
| <input type="checkbox"/> Job De-energized, Voltage in Proximity  |                           |
| <input type="checkbox"/> Working on Energized Equipment  |                           |
| <input type="checkbox"/> Proximity (Railroad, Plant Roadway Clearances) (1, 25, 33, 39, 44, 65)  | 34                        |
| <input type="checkbox"/> System Access (e.g., Initial Line Break, Process Vent, Alteration) (1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 33, 44, 60, 62, 63, 65)                          | 36 4Q, IH-302, 10S        |
| <input type="checkbox"/> Pressurized Material—Type _____ Pipe Diameter _____ Temp _____  |                           |
| <input type="checkbox"/> Compressible Material _____ psi Noncompressible Material _____ ps   |                           |
| <input type="checkbox"/> Hazardous Material _____ Nonhazardous Material _____ Radiological Concern _____   |                           |
| <input type="checkbox"/> Confined Space (1, 2, 7, 8, 9, 10, 33, 54, 55, 60, 63, 65)  | 33 4Q, IH-105             |
| <input type="checkbox"/> Confined Space Entry Permit (OSR 20-15) No. _____   |                           |
| <input type="checkbox"/> Confined Space Hazard Evaluation (OSR 20-170) No. _____   |                           |
| <input type="checkbox"/> Welding, Cutting, Grinding, Open Flame (1, 2, 7, 8, 9, 33, 44, 54, 55, 58, 60, 63, 65)  | 12 2Q, 5, 4, 4Q, IH-105   |
| <input type="checkbox"/> Hot Work Permit No. _____   |                           |
| <input type="checkbox"/> Elevated Work (1, 15, 26, 27, 28, 29, 30, 33, 35, 63, 65)   | 10, 16, 81, 63            |
| <input type="checkbox"/> Scaffold _____ Ladder (Type) _____ Other _____  |                           |
| <input type="checkbox"/> Weather Conditions (1, 31, 32, 33, 34, 35, 36, 38, 65)  |                           |
| <input type="checkbox"/> Visibility <input type="checkbox"/> Rain <input type="checkbox"/> Freezing/Icing Conditions <input type="checkbox"/> Heat/Sun <input type="checkbox"/> Wind |                           |
| <input type="checkbox"/> Wall and Floor Penetrations (Fire Safety Review Checklist, OSR 20-169) (1, 15, 18, 19, 33, 39, 40, 65)  | 12 SRS E/g. Std           |
| <input type="checkbox"/> Oper of Equip Near Overhead Power Lines (1, 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 33, 35, 39, 44, 63, 65)  | 10 18Q, TM-90-7           |
| <input type="checkbox"/> Laser Activities (1, 33, 37, 44, 63, 65)  | 4Q, IH-801                |
| <input type="checkbox"/> Hazardous Material (1, 33, 35, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 65)  | 12, 61 1S, 2Q, 3Q, 4C, 5C |
| <input type="checkbox"/> Asbestos _____ Mercury _____ Radiological _____   |                           |
| <input type="checkbox"/> Carcinogen _____ Cryogenic _____ Flammables (OSR 20-158) _____  |                           |
| <input type="checkbox"/> Lead _____ Benzene _____ Combustibles (OSR 20-169) _____  |                           |
| <input type="checkbox"/> Paint/Solvent CSP 20-153 _____ Other _____  |                           |
| <b>Impairments</b>   |                           |
| <input type="checkbox"/> Authorization Basis (AB)—Tech Spec, Oper Safety Req'd, Tech Safety Req'd (1, 41, 42, 64)  | 2Q, 5, 6, Facility Spec   |
| <input type="checkbox"/> Emergency Systems (Fire Safety Review Checklist, OSR 20-168) (1, 48, 64)  | 12, 52 2Q, 5, 6           |
| <input type="checkbox"/> PA/Safety Alarm System _____ Fire Detection and Alarm System (nonAB) _____ Egress Path _____  |                           |
| <input type="checkbox"/> Emergency Lights _____ Standby Diesel/Power Supply (nonAB) _____ Alarms _____   |                           |
| <input type="checkbox"/> Eyewash/Safety Shower _____ Fire Suppression System (nonAB) _____ Fire Water _____  |                           |
| <input type="checkbox"/> Service Systems (1, 64)   | 2, 3 2Q, 5, 6, 67         |
| <input type="checkbox"/> HVAC _____ Domestic Water _____   |                           |
| <input type="checkbox"/> Steam _____ Demineralized Water _____   |                           |
| <input type="checkbox"/> Air System (Breathing, Instrument) _____  |                           |
| <input type="checkbox"/> Cooling Water _____   |                           |
| <input type="checkbox"/> Power Supply _____  |                           |

## Work Clearance Permit (Contd)

Jon 4 - Review Signatures for Items noted in Section 1, 2 and 3 (Shift Manager enter NA when review is not required)

|   |   |  |     |
|---|---|--|-----|
| Shift Manager/Date (Required)<br><i>C. J. Perry 2-22-99</i>   | Mechanical Maintenance/Date<br>N/A  | E&I/Date<br>N/A                            |     |
| Work Group Supervisor/Date (Required)<br><i>Frankie Adams</i> | WSRC or BSRI Safety/Date<br><i>Frankie Adams</i>  | L2 Mgr Operating Department/Date<br>N/A    |     |
| Utilities Service Group (Power)/Date<br>N/A                   | Fire Protection Coordinator/Date<br>N/A   | Security/Date<br>N/A                       |     |
| Engineering/Technical/Date<br>N/A                             | IH/Date (Reqd for Neurotoxicological Respiratory Protection)/Date<br><i>Frankie Adams 2/22/99</i> | RC&HP/Date<br><i>Frankie Adams 2/24/99</i> | N/A |
| Rigging/Cranes/Date<br>N/A                                    | Subcontract Technical Representative/Date<br>N/A  | Subcontractor/Date<br>N/A                  |     |
| EPD/Date<br>N/A   | HVAC Coordinator/Date<br>N/A  | Construction/Date<br>N/A                   |     |
| Other (WSI, etc.)/Date  | Other/Date  | Other/Date                                 |     |
| Other/Date  | Other/Date  | Other/Date                                 |     |

**Section 5 - Work Clearance Authorization Signatures** (Indicate items in Section 1, 2 and 3 are understood and will be complied with during the job.)

|  |                        |                    |                       |              |
|--|------------------------|--------------------|-----------------------|--------------|
| Shift Manager<br><i>C. J. Perry</i>        | Date<br><i>2-23-99</i> | Shift<br><i>3S</i> |                       |              |
| Work Group Supervisor<br><i>M. D. Hark</i> | Date<br><i>2-25-99</i> | Shift<br><i>A</i>  | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |
| Work Group Supervisor                      | Date                   | Shift              | Work Group Supervisor | Date<br>Date |

Operations Control Room Notified Prior to Start of Work

Yes                  No                  N/A

**Section 6 - Worker Acceptance Signatures** - All personnel working on this WCP shall read this permit, initial, print their name and department below after receiving a supervisor pre-job briefing if they concur that the safety requirements/compensatory measures are understood and will be complied with during the job.

| Initials/Printed Name/Department | Initials/Printed Name/Department | Initials/Printed Name/Department | Initials/Printed Name/Department |
|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |
|                                  |                                  |                                  |                                  |

1 over and make sure that those are, indeed, the contracts  
2 that you administered?

3 A. Yes, ma'am.

4 Q. Thank you. To get the one issue out of the  
5 way, could you turn to -- I believe it's the third  
6 modification of the hog contract. It's the last  
7 modification. It might be four. I think it would be at  
8 the very, very end of that package.

9 A. Yes, ma'am.

10 Q. And could you just read what the  
11 modification -- and it is modification number four.  
12 Could you just read that?

13 A. You want what's in section 14?

14 Q. The language in -- yes.

15 A. [Reading] "Contract is extended to October  
16 31st, 1999, or until a new contract is awarded."

17 Q. Thank you. And the date on that modification  
18 was?

19 A. The effective date was October 1st, 1999.

20 Q. Okay. Did Mr. Hooker continue to hunt hogs  
21 after October 31st?

22 A. After October 31st, I believe he continued for  
23 one month after that.

24 Q. Okay. And why did he only continue for one  
25 month?

1           A.    I believe that at some point -- I don't  
2   remember the exact date, but at some point in time there  
3   was a decision made to have Forest Service personnel  
4   perform services, and so this contract was closed out.

5           Q.    Was Mr. Hooker notified of that?

6           A.    Yes, ma'am.

7           Q.    How was he notified?

8           A.    I haven't seen anything in writing, so I  
9   assume I notified him verbally. I mean, I don't know  
10  if -- I haven't seen anything in writing anywhere, so I  
11  assume that I notified him verbally.

12          Q.    So, I mean, if you had notified him verbally,  
13  what would you have said to him?

14          A.    I would have told him that the decision had  
15  been made by the Forest Service manager at the Savannah  
16  River Site to perform the work via Forest Service  
17  personnel, and that we we're going to close the contract  
18  and he needed to return his government property, and so  
19  forth, that he had and --

20          Q.    Did you --

21          A.    -- he needed to submit a final invoice.

22          Q.    Did you require him to do that, just that?

23          A.    Yes, ma'am. And he, in fact, did all of those  
24  things.

25                   THE COURT: Just a minute, Mr. Gabard. I

1 don't hear an objection, but just for my own  
2 benefit here and the record's, my impression was  
3 you had no recollection at all of the procedure of  
4 termination, and that it was probably oral since we  
5 haven't found anything in writing. And then you  
6 said, essentially, what you would have told him, I  
7 believe. Do you recall having told him that, or is  
8 that your normal procedure? In other words, how do  
9 you know what you would have told him?

10 THE WITNESS: I know that that's what I would  
11 have told him because that's normally what our  
12 procedure would have been when closing out a  
13 contract. We would have asked him to return any  
14 government property that he had, and also to submit  
15 his final invoice for the contract.

16 THE COURT: So you don't recall this  
17 particular case, but that would have been normal  
18 procedure?

19 THE WITNESS: That would have been normal  
20 procedure, yes, sir.

21 THE COURT: All right. Good. Thank you.

22 Q. [Ms. Nichols] And did Mr. Hooker, in fact,  
23 turn in the hog traps and the government property?

24 A. Yes, ma'am, he did.

25 Q. So that was on your request, correct?

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1 A. That was my request, yes, ma'am.

2 Q. So Mr. Hooker was prevented from performing  
3 under that contract after he turned in the equipment,  
4 correct?

5 MR. SCHROEDER: Objection; that improperly  
6 categorizes his testimony. I don't believe he said  
7 that.

8 THE COURT: Well, is that the case? In other  
9 words, did you prevent him from continuing the  
10 contract once you had terminated it?

11 THE WITNESS: The contract was closed, yes.

12 THE COURT: Right. I mean, that would be  
13 normal, I guess. Did it come up as an issue? In  
14 other words, was he asked to leave the property?  
15 Is that what you're saying or --

16 MS. NICHOLS: Well, Your Honor, the issue is  
17 whether he was prevented from performance.

18 THE COURT: Right. The contract, the witness  
19 says, has been closed -- was closed, so I suppose  
20 that means the contractor is prevented from further  
21 action. Is that the normal policy?

22 THE WITNESS: I don't know that I like the  
23 word "prevented," but he could not perform, no.  
24 And it was not --

25 THE COURT: He no longer had a contract?

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1 THE WITNESS: It was not intended that he  
2 continue performance on the contract.

3 THE COURT: Right.

4 THE WITNESS: Because government personnel  
5 would be performing those services.

6 THE COURT: Okay. All right. Go ahead.

7 Q. [Ms. Nichols] Just to continue in this line  
8 of questioning, did you issue a new solicitation sometime  
9 during this period for a new contract?

10 A. Yes, ma'am. As a matter of fact, the  
11 modification that you referred me to was done because we  
12 put -- we issued a solicitation in August of 1999, with  
13 offers due on September 29th, 1999, and the modification  
14 was issued and signed in order to give us continued  
15 performance until a new contract could be awarded.

16 Q. Okay.

17 A. But it was intended -- we had a short-term  
18 modification -- a short-term period until we could get a  
19 new contract in place.

20 Q. Did Mr. Hooker bid on the new solicitation?

21 A. Yes, ma'am, he did.

22 Q. And did you then ask him to extend his offer  
23 for a period of time?

24 A. Yes, ma'am, I did.

25 Q. And how long was that?

1           A.    I asked for a six-day extension, not only for  
2 Mr. Hooker but for any of the other offers that were in  
3 the competitive range.

4           Q.    Okay.  And then did you ask for a second  
5 extension after that?

6           A.    I believe I did, yes.

7           Q.    Okay.  And what was the result of that  
8 solicitation?  Obviously, you got some bids in, and what  
9 did you do then, after you had extended it?

10          A.    Well, the offers were evaluated.  The  
11 technical proposals and highest proposals, business  
12 proposals were evaluated, a competitive range was  
13 established, and I believe it was during the period of  
14 the second extension of acceptance, the manager at the  
15 Forest Service at Savannah River Site made a decision  
16 that the work would be performed via government  
17 personnel, and so there was never a contract awarded from  
18 that solicitation.

19          Q.    Did you testify at deposition that you did not  
20 remember whether you notified Hooker of the withdrawal of  
21 the --

22          A.    I believe I said that I did not remember if he  
23 was notified in writing, but he was notified verbally.  
24 He was notified that the government would be performing  
25 the work.

1 Q. Well, you just testified that you told him  
2 that when you required him to turn in his traps?

3 A. Yes, ma'am, because we closed the contract.

4 Q. But that was at the end of December, was it  
5 not, in 1999?

6 A. I don't remember the exact date, ma'am, but he  
7 was informed that the contract was being closed because  
8 the government was going to perform the work with  
9 government personnel.

10 Q. Well, then why did you ask him to extend his  
11 offer until April?

12 A. We were -- I guess we were still in the middle  
13 of -- I know all the -- I don't -- I've been retired  
14 three and a half years, and I don't remember everything,  
15 but the only thing is I can assume that we were still in  
16 the -- at the time I asked for the original -- or the  
17 second extension of offers acceptance period, we were  
18 still unsure of what we were going to do. As a matter of  
19 fact, I don't think I knew that we were even considering  
20 doing it in-house until I was informed by the manager,  
21 but that's what his decision was.

22 Q. But that would have been when you required  
23 Hooker to turn in his equipment, correct?

24 A. Yes, ma'am.

25 Q. I'd like to ask you to take a look at the hog

1 be in areas where they would need -- other than normal  
2 protection such as snake leggings or boots or something  
3 of that nature.

4 Q. Okay, that's not quite what I asked you, and  
5 I'll try and make it clearer: Did the beaver contract  
6 require any radiological protection other than --

7 A. No, ma'am, they were not in areas where there  
8 was radiation.

9 Q. Did the beaver contract require any of the  
10 workers to be Rad II trained --

11 A. No, ma'am.

12 Q. -- or Rad trained at all?

13 A. No, ma'am. Again, they were not supposed to  
14 be in any areas where there was radiation.

15 Q. Did the beaver contract require GET training,  
16 also?

17 A. Did what, ma'am?

18 Q. The general training that we discussed in the  
19 other contract?

20 A. It probably did.

21 Q. Okay.

22 A. It was a standard requirement in our  
23 contracts, yes.

24 Q. Okay. How were the contractors badged for the  
25 beaver contract and the hog contract?

1           A.    You would have to ask some of them because I  
2   am not -- I don't know what they were monitoring for.

3           Q.    Do you know how many beaver trapping sites  
4   there were on Four Mile Creek?

5           A.    I believe there were four.

6           Q.    Four. Did Mr. Hooker complain to you after he  
7   was required to use this protective gear in this beaver  
8   trapping site?

9           A.    Not initially, no, ma'am.

10          Q.    Did he ever ask you for more money on the  
11   contract?

12          A.    Yes, he did.

13          Q.    Okay.

14          A.    But after he had been performing the work for  
15   a while is when he did that.

16          Q.    What did he say?

17          A.    He was told by both myself and the COR that he  
18   did not have to go into those areas if he did not want  
19   to, that if he considered the work to be outside the  
20   scope of the contract that he could refuse to do it.

21          Q.    How would he trap the beaver?

22          A.    We would do the work with someone else if he  
23   did not want to do it.

24          Q.    Could you do that under the contract?

25          A.    If he refused to do it, yes, ma'am. If he

1 said, blatantly, "I do not want to go in those areas,"  
2 then we would have no alternative but to find some other  
3 way to take care of that problem.

4 Q. If you can recall, did Hooker ask about what  
5 was in the Creek?

6 A. Ma'am?

7 Q. If you can recall the answer to this, did Mr.  
8 Hooker ask you what was in the creeks?

9 A. I don't recall him asking me that, no, ma'am.

10 Q. Why would he have wanted more money?

11 MR. SCHROEDER: Objection; asks for  
12 speculation.

13 THE COURT: Well, if you know. This is  
14 essentially cross-examination, I guess. Do you  
15 have any idea why he would want more money, other  
16 than the normal reasons? In other words, was there  
17 a specific request for more money for a reason,  
18 that you recall?

19 THE WITNESS: I don't recall him specifically  
20 giving me a reason that he wanted more money.

21 Q. [Ms. Nichols] So he didn't say to you  
22 something in the nature of: "If I have to work in  
23 contaminated areas I want more money"?

24 A. I don't recall him saying that, no.

25 Q. During the time of these contracts did Frankie

1 Brooks report to you?

2 A. Yes, she was the contract office  
3 representative.

4 Q. Did she give Mr. Hooker the work orders to  
5 trap the beaver?

6 A. Yes.

7 Q. Was that her job?

8 A. Yes.

9 Q. And --

10 A. To give him the delivery orders. She gave me  
11 the work order, I signed the delivery order, and she gave  
12 them to Mr. Hooker.

13 Q. Okay. Now, how did that work?

14 A. She would give them to me prior to giving them  
15 to Mr. Hooker, and then I would sign the delivery order  
16 and then give it -- she would give Mr. Hooker's copy to  
17 him.

18 Q. Okay. Were the work orders also verbal as far  
19 as --

20 A. The work orders were in writing.

21 Q. All of them?

22 A. They might be general -- I believe they might  
23 say, "Contractor will perform work in sites one through  
24 53 as directed by the COR," and then -- because all the  
25 sites were not -- did not have to be trapped all the

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1 time, and then Frankie would give him information as to  
2 which sites need to be trapped at any given time.

3 Q. Okay. So you're saying that that general work  
4 order to trap sites one through 53 served --

5 A. As directed by the COR.

6 Q. -- as the written order?

7 A. Yes.

8 Q. But then she would amplify that with a verbal  
9 order of some other kind?

10 A. Yes. And she might have put it in writing. I  
11 don't know right off the top of my head.

12 Q. Okay. I believe you testified that you had  
13 actually never visited the beaver trapping sites; --

14 A. No, ma'am.

15 Q. -- is that correct?

16 A. That is correct.

17 Q. In all those years you'd never --

18 A. No, ma'am.

19 Q. Do you know how many beaver trapping sites Mr.  
20 Hooker was working in at the end of June, 1999?

21 A. No, ma'am, I do not.

22 Q. Would you agree that he was probably working  
23 in all 53, or at least that was the -- do you have any  
24 idea?

25 A. I have no way of -- I do not recall, ma'am.

1 Q. Okay.

2 MS. NICHOLS: I am going to enter this as  
3 Plaintiff's No. 4, and this is a list of beavers  
4 trapped in 1999 by month and they're all numbered.

5 Q. [Ms. Nichols] Did you have anything to do  
6 with generating those lists, or was that all from Ms.  
7 Brooks?

8 A. No, ma'am. I didn't have anything to do with  
9 this list.

10 Q. Okay. Are you aware that at the beginning of  
11 July, 1999, the beaver sites were reduced from 53 to one?

12 A. I was aware they were reduced, yes, ma'am.

13 Q. Okay.

14 A. I'm not sure if they were reduced from 53 to  
15 one. They were reduced from whatever the previous number  
16 was to --

17 Q. I grant you that, yes.

18 A. Okay.

19 Q. And the reason they were reduced?

20 A. Is because of the drought. We did not have  
21 the -- as many sites that were being impacted by  
22 beaver --

23 Q. And how did you know that?

24 A. Just general knowledge, being told by Frankie.

25 Q. Can you look there and just tell me how many

1 beaver -- I think it's really easy to look and see how  
2 many he caught in June, how many beavers he turned in?

3 A. Well, there's a mark up here at the top of the  
4 page, but it's partially covered by your exhibit number.  
5 I don't know if this whole thing is for --

6 Q. Mr. Gabard, if I told you it was approximately  
7 40 to 44, would you agree with that?

8 A. Without looking, it looks like there's several  
9 on a couple of receipts here, yes, but without taking the  
10 time to sit here and count them, I don't know.

11 Q. Okay. That's good enough. But you would  
12 agree with me that he only got one work order in July?

13 A. That work order probably said that he's to  
14 trap sites one through 53 as directed by the COR. Now,  
15 what sites she directed to him to actually trap during  
16 the month of July, I do not know.

17 Q. Okay.

18 A. Because that was based on an as-needed basis.

19 Q. Okay. How long did the drought last?

20 A. Ma'am?

21 Q. How long did the drought last?

22 A. Ma'am, I'm not a weather expert. I don't  
23 know. ✓

24 Q. Well, if she told you that the streams were  
25 impacted because of the drought and reduced the sites in

1 For Proposals, RFP?

2 THE WITNESS: I don't think they were able to  
3 find anything in the contract file, so I may have  
4 -- the offers were, I think, due to expire shortly  
5 within that time frame --

6 THE COURT: I see.. They expire automatically.

7 THE WITNESS: -- and so they expire  
8 automatically.

9 THE COURT: All right. Well, good. That  
10 helps get it a little bit straight.

11 MR. SCHROEDER: Your Honor, may I ask just one  
12 question for point of clarification?

13 THE COURT: Sure.

14 Q. [Mr. Schroeder] By taking the work in-house  
15 -- and I don't know if you would know this, but are you -  
16 - does part of that concern or part of taking the work  
17 in-house -- not only performing the services by  
18 government personnel, but do you know if they allowed  
19 deer hunters and recreational hunters to hunt hogs at the  
20 Site?

21 A. I believe they allowed only SRS deer hunts. I  
22 believe they allowed them to kill hogs that came within  
23 the area where they were hunting.

24 Q. But during that two-year period there was no  
25 contract?

1 A. There was no contract, no.

2 MR. SCHROEDER: All right, nothing further,  
3 Your Honor. Thank you.

4 THE COURT: All right. Anything else for  
5 this --

6 MS. NICHOLS: No. Thank you.

7 MR. SCHROEDER: Thank you, sir.

8 THE COURT: All right. Thank you, sir. I  
9 appreciate your testimony. You may step down. May  
10 we release this witness or --

11 MS. NICHOLS: As far as I'm concerned, yes.

12 THE COURT: You are released from the  
13 jurisdiction of this Court.

14 Let me admonish you, however, sir that if --  
15 according to the rules that we invoked, that you  
16 may not discuss your testimony with any witness in  
17 this case or potential witnesses. To do so, would  
18 subject you to possible other actions for contempt  
19 of court.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you very much, sir.

22 THE WITNESS: Yes, sir.

23 THE COURT: I appreciate your help. I guess  
24 we're ready, Ms. Nichols, for your next witness.

25 Incidentally, I assume we're resolving this

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1 A. I don't remember.

2 Q. I'm going to hand you, also, Plaintiff's  
3 Exhibit 8, and I'm going to ask you if you are familiar  
4 with that document because it did not -- it came from the  
5 Rad-Con manager, I believe. Do you know anything about  
6 this document?

7 A. I don't think I've ever seen this.

8 Q. Okay. You'll note that it is a list very  
9 similar to the prior Exhibit, that someone has gone in  
10 and made notations as to whether these places were posted  
11 or not. Would you agree with that?

12 A. I agree with what you said.

13 Q. Okay. I'd like you to take a look at the  
14 other Exhibit and go to 36, which is noted here as P-Area  
15 Outfall. Did you ever see postings at that site?

16 A. No, I didn't.

17 Q. Now, the other sites where you did say you saw  
18 postings, were those contamination area signs, or do you  
19 remember what they looked like?

20 A. I don't remember what was at 53. I know Mr.  
21 Hooker and I went down there, and he showed me a sign  
22 that was bent over on the ground, rusted, covered up, but  
23 he had found it and showed it to me.

24 Q. Okay.

25 A. But I really don't remember where it's at.

1 -- I'm not doubting your word. I'm just -- why do you  
2 think you never saw some of them?

3 ✓ A. I went in a different spot from where the sign  
4 was.

5 Q. Okay. You testified --

6 ✓ A. The one that Mr. Hooker and I found was  
7 completely on the ground.

8 Q. Right.

9 ✓ A. Nobody could see it.

10 Q. Right. The work clearance permit of February,  
11 that I think you're holding in your hand or had, did that  
12 require Mr. Hooker to be monitored?

13 ✓ A. Yes.

14 Q. And was that for only one site on Four Mile  
15 Branch or the whole stream?

16 ✓ A. It was just that one site.

17 Q. Okay.

18 A. He didn't have to get in the water after that.  
19 He could use snares from the bank. He never had to get  
20 wet. He could -- he had a little device that he stuck  
21 down in the ground to put his Conibear traps in so he  
22 wasn't -- unless he went in that one site to remove  
23 beaver dams or something, he didn't have to get wet  
24 again.

25 Q. Did he ask Mr. Gabard and you for more money

1 on the contract after that incident?

2 A. He mentioned it, yes.

3 Q. And what did he say?

4 \ A. He said he didn't bid the job to do Rad-Con  
5 work.

6 Q. Okay.

7 \ A. He told me that. I told him he would have to  
8 talk to Mr. Homer Gabard about it.

9 Q. And do you know what the response was to that?  
10 Did you ever discuss that with Mr. Gabard?

11 \ A. I told him to. I didn't -- I don't think he  
12 got any more money because you can't change the bid in  
13 the middle of a contract.

14 Q. Okay. Let's discuss the hog investigation  
15 that -- and I believe your deposition testimony was  
16 different than your declaration testimony. In your  
17 deposition testimony you said you weren't involved in the  
18 hog investigation, you weren't even there that  
19 day --

20 MR. SCHROEDER: Your Honor, I'm going to  
21 object. She appears to be trying to impeach  
22 without asking a question.

23 THE COURT: Yeah, I think that's not very good  
24 form.

25 MS. NICHOLS: Okay. I apologize, Your Honor.

1 A. I don't understand what you're asking.

2 Q. Well, I think you just read that "because of  
3 the problems we had with Mr. Hooker, we decided to do the  
4 beaver contract in-house."

5 A. That wasn't the only reason.

6 Q. Okay. What were the reasons --

7 A. The main reason was it was a very dry year. A  
8 lot of the sites had dried up completely, and there was  
9 very -- I went around to every site and checked to see  
10 how much water was in them, if they needed trapping, just  
11 what was going on with the sites, and that was the main  
12 reason. They decided to go in-house with the beaver  
13 trapping because there were so few sites.

14 Q. Well, that wasn't the trouble with Hooker, was  
15 it?

16 A. Like I said, it wasn't with Hooker.

17 Q. Well, you said the beaver contract --

18 A. I really don't know what -- I don't remember  
19 saying this, but evidently I did.

20 Q. You said "the beaver contract was kept in-  
21 house because of the trouble with Hooker," so is that not  
22 true?

23 A. That's not true.

24 Q. Okay. That's fine. Did you visit all of the  
25 beaver trapping sites in July?

1 MS. NICHOLS: We would call Vernon Osteen.  
2 Whereupon,

3 VERNON OSTEEN

4 having been duly sworn, was called as a  
5 witness and was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. NICHOLS:

8 Q Good morning, Mr. Osteen. I am Robbie  
9 Nichols, and I am representing Mr. Hooker. Mr.  
10 Osteen, could you give us a little bit of background  
11 on what your position is at Washington Savannah River  
12 Company?

13 A I work for the Washington Savannah River  
14 Company in the Environmental Services Section, and I  
15 deal with natural resources and the Clean Water Act  
16 regulations, and Wetlands regulations.

17 Q And how long have you been doing that?

18 A Well, since '93.

19 Q There?

20 A Yes, in that particular position since 1993.

21 Q Okay. Thank you. And what are your duties?  
22 I mean, what are you responsible for in the scope of  
23 your duties?

24 A Well, if people have natural resource  
25 issues, they tell me about them, and I deal with

1 1-1/2 to 2 feet. The site custodian at HP-52 had a  
2 similar dam torn out several months ago."

3 "Update: The water level at this site has  
4 risen about 0.3 feet in the period from 3 May to 10  
5 May. The dam is now at or slightly above the tops of  
6 the downstream pipes. An additional small beaver dam  
7 is located approximately 20 feet upstream from the  
8 NPDES sample site."

9 BY MS. NICHOLS:

10 Q Thank you. What is the purpose of the  
11 gaging in those areas?

12 A I think that they just need to have an  
13 accurate flow of water coming through those locations.

14 Q And where is that water coming from?

15 A In this location, some of it is coming from  
16 the interior to the H area, which is a facility  
17 upstream across Road E, and there is also some water  
18 coming in from a natural wetland just upstream of that  
19 as well.

20 Q And that would be ground water?

21 A No, that would be surface water.

22 Q Surface water?

23 A Yes. It could be ground water, too, but it  
24 just depends on what is feeding that particular  
25 wetland.

1 Q Okay. But there is discharging to that area  
2 from the plant site?

3 A There would be two locations, two  
4 discharges. One would be from the plant site and one  
5 would be from the upstream wetland.

6 Q Okay. And do they do that on a constant  
7 basis?

8 A They do.

9 Q The plant that is discharging?

10 A Yes, Ma'am. There was an NPDS location  
11 there, and that is a location where the site has to  
12 monitor for the effluent coming out of the facility,  
13 and that is a permitted discharge. It is a State  
14 permitted discharge, and that is what is coming out of  
15 that facility.

16 Q So that monitors for contamination?

17 A Yes, they go through a permitting process to ✓  
18 be allowed to release that water, and it is through  
19 the NPDS program, National Pollutant Elimination  
20 Discharge Program, and they have to get a permit from  
21 the State of South Carolina to be allowed to discharge  
22 that water in that location.

23 Q Okay. So it was not part of your job then  
24 to check the beaver sites?

25 A That's correct.

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1 Company.

2 Q And that was Westinghouse?

3 A Yes. We once were Westinghouse, and now we  
4 are now Washington Group.

5 Q And what does your job entail?

6 A Currently I am the Health Physics Services  
7 Manager, and I am responsible for instrument  
8 calibration, equipment, internal dosimetry, and  
9 external dosimetry, and radiological design.

10 Q And that would include insuring worker  
11 protection, correct?

12 A That's part of it, yes.

13 Q That's part of it?

14 A Yes.

15 Q Just so I understand. Is Dr. Crase part of  
16 your organization?

17 A We both report to the same department.  
18 There is a radiological protection department, and I  
19 report to that department as the health physics  
20 services manager. Dr. Crase is the technical advisor  
21 for that department. We have the same manager.

22 Q All right. And you both report to whom?

23 A The manager's name is Michael Gilles. He is  
24 the radiological protection department manager.

25 Q And this is also Washington Savannah?

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1 Four Mile Branch?

2 A I don't know the length. I can't answer  
3 that question.

4 Q Okay. Are you aware that there are beaver  
5 trapping sites or were in 1999 there?

6 A I was not aware of that.

7 Q Okay. I would like you to turn to page  
8 seven, Personal Protective Equipment Controls.

9 A Okay.

10 Q Can you tell me what was required to collect  
11 and handle potentially contaminated materials?

12 A Well, we need to be real careful about what  
13 we are talking about here. This is an active  
14 environmental restoration project. It has nothing to  
15 do with beaver trapping, and it has nothing to do with  
16 environment, and somebody going out and pulling  
17 samples.

18 This is involving a natural restoration  
19 project, where there is heavy equipment, and there  
20 could be digging up soils, and there could be digging  
21 up rocks. So it looks like we did have protective  
22 equipment, PPE, personal protective equipment, during  
23 this environmental restoration project.

24 Q Okay. And what were those?

25 A Just like it says here, latex gloves, and

1 then you get into some of the other industrial  
2 hazards; snake resistant boots, hearing protection  
3 because of the heavy equipment; working in swamp buggy  
4 type equipment, and I don't even know what that is.

5 Q And what would be the exposure routes that  
6 are identified, and as to how somebody could be --

7 A Well, again, for an environmental  
8 restoration project, there are several pathways to  
9 acquire a dose in the human body. One is by direct  
10 exposure from radioactive material in the soil, direct  
11 radiation exposure.

12 You can get it by inhalation, and you can  
13 get it by ingestion. That is pathways that get into  
14 the body.

15 Q Okay. What about a wound or cut?

16 A Absolutely, if there is a wound or cut.

17 Q And what were the contaminants in this  
18 particular plan?

19 A Let me just skim through this.

20 MS. NICHOLS: All right.

21 (Pause.)

22 THE WITNESS: They are listed as Tritium,  
23 Cesium-137, Gross alpha, and non-volatile beta.

24 BY MS. NICHOLS:

25 Q And what is Gross alpha?

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1           A     Gross alpha could be anything.  It could be  
2 residual uranium, plutonium, anything that is an alpha  
3 emitter.

4           Q     And beta?

5           A     In this case, for non-volatile beta, they  
6 are talking about things like Carbon 14, but the main  
7 contaminant that I am looking at is Cesium-137, which  
8 is also a beta-gamma emitter.

9           Q     Okay.  And going back to page 5, under the  
10 section that is titled, "Tasks Descriptions - Hazard  
11 Summary - Controls."

12          A     Yes.

13          Q     Could you just read 3.1 into the record?

14          A     Sure.  "Workers may be exposed to the  
15 hazards described in Section 2.0 while performing the  
16 following tasks:

17                 One, prepare access to sample locations by  
18 cutting brush above the ground surface.

19                 Two, locate and flag specific sample  
20 locations using hand held field detection equipment.

21                 Three, perform in-situ measurements of soils  
22 and sediments for radiological contaminants using hand  
23 held equipment that is held over the ground surface,  
24 but does not require disturbing the ground held  
25 equipment that is held over the ground surface, but

1 does not require disturbing the ground surface.

2 Four, collect soil and sediment "grab"  
3 samples using hand augur or a hand scoop.

4 Five, collect surface water "grab" samples  
5 using a hand scoop.

6 Six, process samples in an on-site  
7 radiological laboratory.

8 Seven, package samples for shipment, and  
9 eight, decontaminate equipment.

10 Q And so based on this, you were requiring  
11 gloves to do all of this, correct?

12 A According to the safety and health plan,  
13 yes, that is what it sounds like what it used to be.

14 Q To your knowledge was there any protection  
15 required for beaver trappers?

16 A Not that I am aware of.

17 Q Okay. One more document, Plaintiff's  
18 Exhibit 14, Surveys of Soil Contamination Areas. If  
19 you could review that, and take as much time as you  
20 need to review that.

21 A Okay.

22 (Pause.)

23 THE WITNESS: Okay.

24 BY MS. NICHOLS:

25 Q Is this a document that you authored?

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1 that site prior to signing this, and when you were  
2 presented with this work clearance permit?

3 A I had been there at Four Mile Creek for  
4 about 7-1/2 years.

5 Q And to your knowledge, you said you never  
6 received another one. Was there another permit  
7 generated to this same site?

8 A After 30 days. The permit is just good for  
9 30 days, and after that, you have to get another one,  
10 and I never received another one. Can I explain that?

11 Q Sure.

12 A Upon arriving at Site 53, I was handed this  
13 document.

14 Q Who handed it to you?

15 A Frankie Brooks. There were two RCO  
16 personnel there.

17 Q Could you just explain what RCO is?

18 A RadCon Officer. These people were supposed  
19 to check the health conditions. Where it says RAD II  
20 qualified, the RCO people asked me for my credentials,  
21 which were in the truck back up on the road.

22 So I had to go back up to the truck and get  
23 that badge that I was RAD II qualified.

24 Q Let me just stop you. You were RAD II  
25 qualified because of your other job; is that correct?

1           A     Yes, through Westinghouse. I showed them  
2 the badge where I was qualified as a RAD II worker,  
3 and then I went ahead and did the job. I asked them  
4 was it all right to get in the creek, and they said,  
5 yeah, go ahead.

6                     So I was in the creek with a pair of waders  
7 and I don't recall having gloves on at that particular  
8 time.

9           Q     Did they ever tell you what was in the  
10 creek?

11           A     No, Ma'am. Well, it was hazardous material,  
12 asbestos, and inside the fence there when you work  
13 with WCP, it is checked off, or you have procedures  
14 that you are supposed to go by.

15                     I mean, after I got through and I set the  
16 trap in the water, per the contract all traps had to  
17 be set in the water, and that is a State of South  
18 Carolina law that the traps be set in the water.

19                     And after I got out of the water, they  
20 didn't have a step off pad for me to step on, and so  
21 they were trying to figure out what to do, and so I  
22 said go up there to my truck and get one of those  
23 garbage bags out of my truck, and I said I'll step on  
24 that.

25                     So I stepped on that, and they didn't have a

1 wrench stand or anything like that to wrench my waders  
2 on, and so again they went back to my truck and got my  
3 drinking water, and they washed my waders off with my  
4 drinking water.

5           So they took some smears and they left, the  
6 two girls left and said they would be back in a little  
7 while. So in the meantime, I asked Frankie if it was  
8 all right if I used snares on the bank at the site.

9           And she said it wasn't a problem using  
10 snares, and the reason that I asked him is that by  
11 State law, all snares in the State of South Carolina  
12 have to be set in the water also, and per contract,  
13 everything had to be set in the water.

14           And what I was trying to do was get  
15 permission to use snares on the bank, and like where  
16 the beavers will make a trail over different areas,  
17 and you call them slides, and that's where you can  
18 normally set up a snare on the animal's trail. So I  
19 didn't have to get back in the water.

20           Q     Let me stop you for a moment. When you were  
21 beaver trapping did you get your hands in the sediment  
22 of the soil regularly?

23           A     Every time. There were a lot of traps, and  
24 you would be digging in the mud for approximately a  
25 foot, and you would get in that mud. If you know

1 anything about beavers, they do down to the bottom of  
2 the pond, and they get a big handful of that stuff,  
3 and they scoot it up on the bank, and then they would  
4 spray it, like a cat would spray, or a dog would spray  
5 a tire.

6 And that's what they do when they are  
7 marking their scent, and some particular sets will be  
8 up under the water, and an arm deep, and they will be  
9 where sometimes they have dug up under the bank, and  
10 you will set the traps up there.

11 Beavers do a lot of damage. A lot of people  
12 don't realize exactly what they do, but they do a lot  
13 of digging.

14 Q Let me ask you this. Was that area posted  
15 at that time?

16 A That particular day, it was posted.

17 Q It was posted. Had it been posted before?

18 A No, Ma'am, there were no signs up on that  
19 SCA. The signs would have said SCA, contact RCO. ✓

20 Q But there was no signage there prior to that  
21 time?

22 A . No, Ma'am.

23 Q When was the next time that you saw -- well,  
24 backing up a little bit. Did you ever get an answer  
25 to your question of what was in there that caused you

1 that time.

2 Q Had you seen signage on that site before?

3 A HP-52?

4 Q Yes.

5 A No, Ma'am. I had trapped that site for a  
6 few years and there was no signage.

7 Q Did you request more money for trapping in  
8 these areas?

9 A I went to Frankie three different times, and  
10 requested monies, and she told me to go see Homer  
11 Gabard, and I went to Homer, and Homer said it was per  
12 contract that we worked, and I went back to Frankie,  
13 and Frankie said if I didn't do the work, then I would ✓  
14 have to default the contract.

15 She told me three times that if I didn't do  
16 the work that I would be in default of the contract.

17 Q Were you paid by the beaver carcass?

18 A Yes, Ma'am. That is what the contract  
19 happened to be, and I started out trapping beavers for  
20 the U.S. Government for \$99 a beaver on the first  
21 contract, and I was called in by Homer Gabard, and he  
22 said told me to give him my best offer, and I lowered  
23 it to \$75.

24 That was the first year that I ever trapped  
25 beavers for the government, and I think he busted that

1 contract after six months.

2 Q What do you mean by busted the contract?

3 A We covered all the beavers under the  
4 contract. I think it was like a \$25,000 contract, and  
5 at \$75 a beaver carcass, we would cover the contract,  
6 and what they would do is they would just go back and  
7 issue another contract, and another \$25,000 contract.  
8 That's exactly what we were doing.

9 Q Okay. Do you remember how many beaver you  
10 trapped in June of '99?

11 A I would have to look at the exhibit.

12 Q I am handing the witness Plaintiff's Number  
13 4. If you would just take a look at that for June of  
14 '99.

15 A Okay.

16 (Pause.)

17 THE WITNESS: Forty-three.

18 BY MS. NICHOLS:

19 Q Forty-three?

20 A Well, it is all the months in here?

21 Q Yes.

22 A Let me go back.

23 Q No, that's fine. That's approximate?

24 A Yes.

25 Q And could you look at July and tell me how

1 many beavers you trapped in July?

2 A There were none caught in July.

3 Q None caught in July?

4 A No.

5 Q And what was the reason for that, Mr.  
6 Hooker?

7 A I believe it was because I asked what was in  
8 the water at Four Mile Creek, and the first time --

9 MR. SCHROEDER: Objection, speculation. The  
10 question calls for speculation as to how someone else  
11 acted.

12 THE COURT: I thought the question was how  
13 did he feel about it. What was the question again?

14 BY MS. NICHOLS:

15 Q Why didn't you trap any beavers in July?

16 A I believe it was because when I asked about  
17 Four Mile Creek, and also about HP-52.

18 Q Okay. But what I am asking is were you  
19 given work orders for each site that you were to trap?

20 A I was given one work order to trap Sites 1  
21 through 53.

22 Q And how did you then know which site to go  
23 to?

24 A Frankie would issue the work orders, and  
25 once that WCP came out, and that is that document

1 at, and I will abandon this particular line of  
2 questions, but what I was getting at is you were  
3 directed by -- let me put it a different way. Were  
4 you directed by Frankie Brooks to specific areas to  
5 trap in?

6 A I believe so, yes.

7 Q And did she direct you to any areas during  
8 July?

9 A No.

10 Q Did she direct you to any areas during  
11 August?

12 A I believe I had a couple sites, maybe one or  
13 two sites back in August.

14 Q Out of how many sites?

15 A Out of the 53 sites. It was actually more  
16 than 53 sites. Beth LeMasten had given me some verbal  
17 work orders.

18 Q So you did not receive any verbal work  
19 orders from Frankie in July; is that what you  
20 testified to?

21 A Yes, Ma'am.

22 Q Okay. Did you continue to perform the hog  
23 contracts during the rest of the summer and fall?

24 A Yes, Ma'am, I had both contracts and I was  
25 doing the hog contract at the same time I was doing

1 the beaver contract.

2 Q All right. Did you observe the beaver  
3 trapping sites when you were out hunting hogs?

4 A Yes, all the time.

5 Q And what was the condition of those beaver  
6 trapping sites?

7 A Beavers were building dams, and stopping up  
8 culverts, and there was flood and timber damage.

9 Q But you were given no work orders for  
10 trappings?

11 A No, Ma'am.

12 Q And back to June, did you have an employee  
13 videotape one of the signs?

14 A Back in June, and I want to say June 1st, I  
15 was setting traps in HP-52, and that was a particular  
16 where I felt like that I needed to maybe hire stand-by  
17 personnel.

18 And I hired a guy by the name of Mark  
19 Schmitz, and I told him that the water was about a  
20 foot deep, and at this particular site the water was  
21 about a foot deep, and the stream was about -- it  
22 might be two foot in that particular area.

23 But I gave him a life jacket, and I told  
24 Mark, and when Frankie first pulled up there, and I  
25 told her I was going to video it, and I told her I

1 would like to know what was in HP-52.

2 And she had a pad of paper, and she told me  
3 to do the work, and I said I was going to do the work,  
4 and that's when we talked to them about getting more  
5 money.

6 So I went ahead and paid Mark, and I want to  
7 say I paid him \$250 or \$300 a day for videoing, and he  
8 asked me what I wanted him to do, and I said all I  
9 want you to do is stand on that field and video  
10 everything that is going on.

11 Q And that was around the 1st of June?

12 A I want to say it was the 1st of June or  
13 thereabouts, 1999.

14 Q And at the end of June did you have problems  
15 with the hog contract?

16 A I want to say that June 30, and I was told  
17 the night before by Frankie Brooks to go and get all  
18 the radios. I had about three or four men who had  
19 radios. But of us had radios to communicate, and I  
20 think I told the guys to meet back up at one o'clock  
21 at Forestry with the radios because they were doing an  
22 inventory is what I was told.

23 So when I got up there, it wasn't an  
24 inventory. They instructed me to go into a room with  
25 a Wackenhut guy. I want to say that his name was

1 earlier, and I got a letter saying that they were  
2 barred forever.

3 Q Did they also take money away from -- did  
4 they refuse to pay you for some of those hogs?

5 A Yes, Ma'am.

6 Q And also withheld monies for hogs that had  
7 already been paid for?

8 A I want to say it was about 25 or 30 hogs in  
9 question and Frankie told me that they had been  
10 investigating me for three months, and she is the one  
11 that told me that SRL Ecology Labs flew my property  
12 and used their pilot to fly my property.

13 Q Changing the subject a little bit, when you  
14 were asking for more money to work in these areas that  
15 you found actually were posted, when you were asking  
16 for more money, what was the basis for that? I mean,  
17 how much did you think that was worth?

18 A My background -- can I talk about what my  
19 background is?

20 Q Sure.

21 A I started out at the Splinder Plant in 1976.  
22 I think it was in June, and I started out as a piper  
23 apprentice, and I finally got a job estimating, and on  
24 the construction side, I worked for M.K. Ferguson,  
25 which is now Washington, and I have done estimating in

1 plants, and if it was clean work, then you did it just  
2 like you would an outside job.

3 But if you were stepping inside and into  
4 radiation areas, you automatically estimated it at  
5 five times. You don't know what is going to happen.  
6 When you are dealing with other companies that have  
7 control over the HP, they don't go to work at the same  
8 time you do.

9 ✓ They may say they do, but as an example,  
10 they were supposed to have been there at eight o'clock  
11 on June 1 at HP-52. Well, they got there at 11  
12 o'clock.

13 So there I am standing there with the guy  
14 who is the standby man. We got paid, but it is not  
15 the same. These bigger companies work by the hour. I  
16 didn't work by the hour. I worked by the quantity.  
17 It was a quantity and not quality type job.

18 Q So your testimony would be that you would  
19 have bid five times the amount on a job?

20 A At a minimum.

21 Q And what was the price per beaver during  
22 that contract at issue?

23 A I want to say about \$45. It might have been  
24 less than that. I would have to look at the actual  
25 contract. It was like a three year contract.

1 higher beaver sites, for all the sites, or just the  
2 sites that you claim that there was a problem?

3 A I am seeking money for all sites.

4 Q For all 53 sites, regardless of whether  
5 there is --

6 A Well, water flows downhill. I mean, you  
7 can't trap at HP-52 and then you have got eight other  
8 trapping sites below that trapping site. I mean, it  
9 doesn't just stop right there.

10 MR. SCHROEDER: Okay. Thank you for  
11 clarifying that. Nothing further, Your Honor.

12 THE COURT: All right. Ma'am.

13 MS. NICHOLS: No, sir, nothing further.

14 THE COURT: Sir, you are excused. Please do  
15 not discuss your testimony with any witness in this  
16 case or potential witness. Thank you.

17 (Witness excused.)

18 THE COURT: All right. Ms. Nichols, who is  
19 your next witness?

20 MS. NICHOLS: We would call John A. Cromer,  
21 III, as our next witness.

22 THE COURT: Just a minute, please. Tell him  
23 to hold off a minute, please. All right. We are  
24 going to have the expert now?

25 MS. NICHOLS: No, we are going to have Mr.

1 Q Was that posted at all times while you were  
2 trapping there?

3 A No.

4 Q Did you continue to hunt hogs with Mr.  
5 Hooker in the last half of 1999?

6 A Yes, Ma'am.

7 Q And did you have occasion to go into any  
8 beaver trapping sites to look at them?

9 A Yes, Ma'am, with the hog contract, we are  
10 all over those protective sites.

11 Q All right. Was there still beaver activity?

12 A Yes, Ma'am.

13 Q But you were not catching any beaver,  
14 directly catching any beaver during that time; is that  
15 correct?

16 A No, Ma'am.

17 Q Was the water level very low?

18 A No.

19 Q Do you know where the water comes from in  
20 Four Mile Creek or HP-52?

21 A The majority of the beaver sites are spring  
22 fed, and so from the outfall and from the plant, but  
23 the majority of the sites we were in were spring fed.

24 Q While you were trapping beaver and hunting  
25 hogs on these sites during these current contracts

1 you for. It is always a big help, and it has been  
2 particularly helpful in this case, and where there  
3 were two contracts with different provisions, and it  
4 made it all the more helpful to have a number of  
5 agreed to facts.

6 And I think I said during the closing  
7 arguments that I really need to say as far as  
8 rationale that I also will issue an opinion to  
9 supplement this as soon as I can.

10 I don't have any law to give you, for  
11 example, though probably very soon I will issue an  
12 opinion that will state the facts that I have been  
13 able to find and the law, and reasons for taking this  
14 action in granting the 52(c) motion.

15 But I don't know that I have a really good  
16 sense of the case as the Plaintiff presented their  
17 case. I could never understand what exactly the  
18 contract was that the Plaintiff claims was breached,  
19 and even I could, I couldn't see damages resulting  
20 from a breach, and in most cases of this type, there  
21 are many cases in which a breach can cause problems  
22 other than money damages.

23 But in this case money damages is the only  
24 issue, and the Plaintiff has alleged bad faith in  
25 several aspects, but normally that is a serious

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1 allegation, but it is a very difficult allegation to  
2 prove against the United States, simply because the  
3 presumption at best or the law provides for government  
4 employees a presumption that they act in good faith.

5 And which is a presumption incidentally that  
6 I afford any witness initially. In other words, I may  
7 assume someone acted in good faith and it is not a big  
8 deal, because I tend to assume that everyone acts in  
9 good faith, and everyone tells the truth, whether they  
10 work for the government or not.

11 But for whatever purpose bad faith was  
12 brought into it, and number one, as a matter of fact,  
13 I could not see any bad faith through the witness  
14 stand, and the next question in my mind is if I had,  
15 so what.

16 What is it that the government did in bad  
17 faith that amounts to money damages, and that is  
18 something that was foremost in my mind in this type of  
19 case, and I need find some injury or problem that  
20 warrants damages of some kind that is within my  
21 jurisdiction, and then have a way of calculating those  
22 damages.

23 But from the very beginning, I could not see  
24 the damages here, and again if Mr. Hooker had been  
25 told in the contract, and even there I am not sure

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1 that he was, but had he been told in the contract that  
2 he didn't have to worry about radiation, and got on  
3 site and found that he did, and the classic different  
4 site conditions case, and had to run out and buy all  
5 sorts of boots, protective suits, flashlights, or  
6 whatever, then that is a different story, and he is  
7 entitled to be compensated for that.

8 But there has been no evidence that he did  
9 that or anything else that he would have anticipated  
10 doing if he did, and there is also no evidence that he  
11 needed to frankly.

12 I simply could not see any of the elements  
13 really of the type of breach that we normally look for  
14 in a case such as this. The issue -- and I want to  
15 touch on this issue briefly and carefully, because I  
16 am not sure that it matters either, but as far as the  
17 purely legal issue of interpreting the contract -- and  
18 I mention it gingerly because I am not sure that it  
19 matters either, and it really wasn't argued that much,  
20 if at all, here.

21 But if that were an issue or had been, the  
22 fact is that the government went in-house, at least  
23 fairly close to the period of the contract expiring --  
24 and I don't know exactly when that was, but the  
25 contract was expiring, and there was an extension for

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1 a month, and the government went in-house thereafter.

2 So if there was some need for a new contract  
3 and meet the requirements of that contract, then  
4 arguably this in-house performance would be  
5 sufficient, but that is an issue that I merely bring  
6 up and not make it part of my ruling, because in case  
7 that is wrong, or in case that there is something  
8 about the dates that confused me, I don't want it to  
9 be part of the holding, because it just doesn't  
10 matter.

11 And I don't want the case remanded and for  
12 it to start all over for something that didn't make  
13 any difference in my ruling. Bad faith was one of the  
14 issues brought up in the beaver contract, and that  
15 there was bad faith in not renewing the beaver  
16 contract.

17 Again, how that sort of happened didn't come  
18 up, or did not come up. There were a lot of issues in  
19 fact that I thought would be important here in the  
20 testimony, and the argument simply didn't arise.

21 But as a general statement in a contract  
22 claim, you have got to show that there was a contract,  
23 and a contract existed in other words, and that the  
24 government breached it, and that there was damages as  
25 a direct result of that breach.

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1           None of that was tied together here,  
2           however, and we found out or I did sort of for the  
3           first time just before we broke about the beaver  
4           contract and the contracting officer -- well, the  
5           Plaintiff said that he only got one beaver, or his  
6           attorney did.

7           Well, the way that I now understand it  
8           worked was that there was a work order given and it  
9           included in that work order an area to hunt for the  
10          beaver, and that the Plaintiff only got one beaver in  
11          each of the four more outings.

12          Then there was a problem. Either the  
13          Plaintiff was not using the spray or however he gets  
14          them, or there were not that many beavers, and if  
15          there weren't as many beavers, that is not really the  
16          government's fault.

17          I can't see where it would be their fault,  
18          whether there is a drought or something else. I can't  
19          see that as being the fault of the government. I have  
20          got just dozens of things that I could talk to you  
21          about, and I don't want to bore everyone to death.

22          But I will as I say issue an opinion  
23          shortly, and confirm most of what I have said, and I  
24          will incorporate what is in the record from what I  
25          have jus said, and also before the break.

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**CERTIFICATE OF SERVICE**

**United States Court of Appeals  
for the Federal Circuit**

No. 2008-5059

-----)  
WILLIAM D. HOOKER  
(doing business as Georgia Bowhunters Supply),  
*Plaintiff-Appellant,*

v.

UNITED STATES,  
*Defendant-Appellee.*

-----)  
I, John Kruesi, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Berta E. Nichols, Attorney for Plaintiff-Appellant.

On the **20<sup>th</sup> Day of May, 2008**, I served the within **Brief and Appendix for Plaintiff-Appellant** upon:

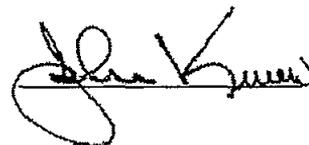
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Attorney for Defendant-Appellee

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May 20, 2008



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(s)  Berta E Nichols   
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Attorney for Appellant