

UNITED STATES  
DEPARTMENT OF AGRICULTURE

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COMMODITY  
CREDIT  
CORPORATION

KANSAS CITY  
COMMODITY OFFICE  
P.O. BOX 419205  
KANSAS CITY MO 64141-6205

NOTICE TO CARGO SURVEYORS  
REQUEST FOR PROPOSALS  
(Standard)



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## I. INTRODUCTION

Commodity Credit Corporation (CCC), a corporate entity of the U.S. Department of Agriculture, is issuing this Request For Proposals (RFP) to survey companies (hereafter referred to as "surveyor" or "firm" or "contractor") for future discharge and delivery surveys that will be conducted in the countries or regions listed in Section 4 of this document. Please note that commodities may not be scheduled for shipment currently to some of these countries or regions; however, we are awarding survey contracts for them in order to have surveyors available. The contracts awarded shall be firm fixed price, indefinite delivery/indefinite quantity contracts. CCC reserves the right to award the contracts without discussion. **Please read this document carefully. Several significant changes are being implemented for these contracts.**

## 2. PURPOSE

The purpose of these contracts is to provide monitoring services for certain United States food aid cargoes that are discharged and delivered at overseas locations, and provide the U.S. Department of Agriculture with cargo discharge and delivery surveys for use in pursuit of cargo loss and damage claims against ocean carriers.

## 3. SCOPE OF WORK

Contracts will be awarded on a country/region-wide basis. If a shipment is diverted from one location in the recipient country/region to another location in that country/region, the surveyor will still be responsible for surveying the cargo at the ultimate destination at the contracted rate.

Cargo will be shipped in bulk, breakbulk, or in containers. It will be shipped port-to-port or on through bills of lading. For port-to-port shipments, the surveyor is required to attend at the discharge port. For shipments moving on through bills of lading (including containerized shipments), the surveyor is required to attend at the following locations:

1. Discharge port (where the transportation changes from an ocean mode of transportation to a land-based mode of transportation). This may be in a different country than the country/region for which the surveyor has a contract.
2. Customs locations. This includes all locations between the discharge and final delivery location where customs officials may access packaged commodities.
3. Delivery location.

Our expectation is that the surveyor will liaise and coordinate with the vessel agents and the receivers or receivers' agents in performance of the contracts.

In general, we are seeking experienced surveyors who:

- Coordinate their attendance at the discharge, customs, and delivery locations by communicating with the vessel, vessel's agent, receiver, and receiver's agent.
- Attend and monitor the discharge of the cargo from the vessel and, as necessary, attend and monitor at customs and inland delivery locations.
- Provide a detailed, well-documented survey report addressing each of the specifications required for the type of shipment involved and reporting results by bill of lading number.
- Provide a level of customer service satisfactory to the U.S. Department of Agriculture.

Please see Section 14 for the complete technical requirements. In addition, attached to this solicitation is a Statement of Work that provides guidelines concerning content and explains our expectations for the service provided by the surveyor.

## 4. COUNTRIES/REGIONS TO SURVEY

Contracts will be awarded for the following countries or regions. The surveyor will be responsible for all cargo shipments being delivered to the particular country or region for which CCC is responsible for arranging surveys. **The surveyor shall submit only one rate schedule for an entire country or region.**

COUNTRY/REGION	COUNTRY/REGION	COUNTRY/REGION
Albania	Eritrea	Mozambique
Angola	Ethiopia *	Namibia
Balkans (includes, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Yugoslavia)	Georgia	Niger
Bangladesh	Ghana	Nigeria
Benin	Guinea	Pakistan
Bolivia	Guyana	Peru
Burkina Faso	Indonesia	Philippines
Burundi	Ivory Coast	Rwanda
Cameroon	Jamaica	Senegal
Cape Verde	Jordan	Sierra Leone
Central America (includes Guatemala, Nicaragua, El Salvador, Panama, Belize, Costa Rica, Honduras)	Kenya	South Africa
Chad	Lebanon	Sri Lanka
Congo (Brazzaville)	Madagascar	Sudan
Dem. Rplc. of Congo (Kinshasa)	Malawi	Togo
Djibouti *	Mauritania	Uganda
Dom. Rep. and Haiti	Moldova	Vietnam
Ecuador	Mongolia	West Bank/Gaza
Equatorial Guinea	Morocco	Yemen

\* In addition to the other requirements for proposal submission, the surveyor shall provide documentary evidence that it is currently licensed by the Ministry of Transport and Equipment in the country of Djibouti to perform discharge surveys in the port of Djibouti.

## 5. PROVISIONS OF CONTRACT

The contract shall consist of:

1. This solicitation
2. Surveyor's proposal
3. CCC's acceptance

## 6. GENERAL TERMS AND CONDITIONS

- A. The contract shall cover shipments that are scheduled to commence discharge from October 1, 2004, through September 30, 2005.
- B. Each contract shall be for all cargoes, for which CCC is responsible for arranging surveys, being discharged/delivered to the respective country/region. **Surveyor shall attend at discharge of the cargoes, any customs locations at which cargoes are accessed by customs officials and at the delivery location and provide a report of the results pursuant to Section 7.**
- C. CCC will advise the surveyor by fax or e-mail of each shipment to be surveyed. The surveyor shall liaise with the carrier's agent or receiver contact party for full details. The surveyor shall acknowledge receipt of the notification by return fax or e-mail within 3 business days, or less, at the discretion of CCC.

- D. The surveyor must be available on short notice for many of these shipments. Given the nature of food aid shipments, the surveyor may need to attend at different discharge and/or delivery locations at the same time.
- E. Do not check the quality of cargo in sound packages.
- F. The survey report should have a printed name and signature by the actual surveyor whenever possible. All documentation shall either be in English or accompanied by an English translation.

The surveyor's report shall address each specification in numerical order **and** shall quote the specification **and** be labeled with the specification number. Any attachments shall be labeled with the appropriate specification number.

- G. The surveyor must submit a separate survey report for each originating vessel's cargo and destination. CCC shall not accept survey reports with information combining vessels or destinations. For example, if the cargo from one vessel is being transported to two locations, the surveyor shall submit two separate survey reports. If more than one vessel is transporting cargo to one location during the same period of time, the surveyor shall submit separate survey reports for each vessel's cargo (including containerized cargo). **In addition**, the surveyor shall report shortage and damage losses by ocean bill of lading number.
- H. The base rate to pay for a survey shall be based on the quantity shipped on the originating vessel to each destination. In the event cargo is transhipped on feeder vessels, the rate to pay shall still be based on the quantity shipped on the originating vessel to each destination. The rate to pay for customs location work shall be as described in Section 13.
- I. Immediately forward to the CCC contracting officer a facsimile or e-mail advice in the event of damage that in the surveyor's estimation exceeds USD \$20,000 (commodity plus freight) or in the surveyor's estimation constitutes a significant loss.
- J. The surveyor shall provide a copy of the survey report to the receiver of the commodity.

**7. SPECIFICATIONS**

- A. The following table specifies which of the specifications from Section 7.B. apply to the particular survey type.

Specification No.	Breakbulk Discharge	Bulk Discharge	Breakbulk Delivery	Bulk Delivery	Container Delivery
1	X	X	X	X	
2	X	X	X	X	X
3					X
4	X		X		X
5	X	X	X	X	X
6	X	X	X	X	X
7	X	X	X	X	X
8	X	X	X	X	
9	X	X	X	X	X
10	X	X	X	X	X
11	X	X	X	X	X
12		X		X	
13		X		X	

Specification No.	Breakbulk Discharge	Bulk Discharge	Breakbulk Delivery	Bulk Delivery	Container Delivery
14	X	X	X	X	X
15			X	X	X

- B. The specifications that follow represent all of the specifications for all the types of contracts to be awarded. Some of the specifications will not apply depending on the type of shipment involved. See Section 7.A. for which specifications are included in a particular survey type.
- (1) Check vessel holds before and after discharge and provide details of findings. Note quantity of cargo left on board, if applicable.
  - (2) Personally observe discharge of all packaged cargo, bulk cargo, or containers from the vessel and describe in detail the discharge process. If applicable, personally observe the delivery of all packaged cargo, bulk cargo from the inland conveyance or container and describe in detail the delivery process. Report must state the specific location of surveyor during discharge and delivery, i.e., in the vessel hold, on the quay, at the door of the container, etc.
  - (3) Containerized Cargo
    - (a) List container and seal numbers at time of discharge and delivery. If seals are missing or different from manifest at time of discharge and delivery, state the reason, if known. Note if containers have been opened.
    - (b) Identify quantity, condition, and weight loss of any damaged cargo destuffed, by container number.
    - (c) Advise whether containers were in any way damaged at time of discharge/delivery. Furnish a photo or complete diagram and description of the damage, by container number. If contents of any damaged containers are examined or removed, surveyor shall tally and ascertain the quantity of damaged cargo.
  - (4) Tally cargo so you can determine what losses are occurring before, during, and after discharge and/or delivery. Stroke tallies must be accurate and forwarded with the survey report. Tally sheets must have a printed name and signature of the surveyor and tallymen who actually conducted the survey. If not in English, at least one must be accompanied by an English translation.
  - (5) Surveyor's original notes must accompany the report.
  - (6) Advise quantity and condition of cargo at discharge and/or delivery. Provide actual or estimated weight loss of any damaged cargo, provide a complete description of the type and severity of the damage, i.e., torn/slack, wet, moldy, etc., and give probable cause of damage(s). State how the weight was determined and provide photographs if possible.
  - (7) Notify the captain of the vessel, the vessel's agent, the inland carrier, or the inland carrier's agent, in writing, within 3 business days of completion of discharge and/or delivery, of the losses that you have observed. Furnish a copy of the written notice with your survey report. This notice may be faxed to the carrier's agent shown on the shipment notification. If this is done, forward the transmission report evidencing successful transmission.
  - (8) For through bill of lading shipments of breakbulk cargo, the surveyor shall be required to attend, monitor, and report on the loading of the cargo onto land conveyances at the discharge port for movement inland. For through bill of lading shipments of bulk cargo, see specification 12.

- (9) Document reconstitution efforts and results, including where, when, and how the reconstitution weights were determined. Obtain and forward health officer's certificate(s) and laboratory analysis for any cargo suspected to be unfit, as well as any destruction or disposal documentation. If the receiver has not commenced reconstitution or disposal/destruction within two weeks of completion of delivery, you may finalize your survey report and submit it for payment. However, surveyor shall liaise with the receiver to establish final disposition, witness and document any reconditioned cargo, and follow with appropriate documentation (recondition or disposal/destruction).

If any cargo is suspected to be unfit and the local Health Official is not immediately available, surveyor shall pull representative samples. The surveyor shall then contact the CCC contracting officer for authorization to conduct analysis at the surveyor's laboratory. CCC reserves the right to direct the Surveyor's actions with respect to sampling.

- (10) Immediately upon completion of discharge and/or delivery, fax or e-mail the completed **preliminary** discharge/delivery survey summary sheet(s) (KC-334) to the CCC contracting officer. The survey report must include the **final** discharge/delivery summary sheet(s) for each commodity discharged.
- (11) Provide certification that you were present during the entire discharge/customs/delivery/destuffing process. Certification should be in the form of a letter signed by the vessel captain, and/or the vessel agent, and/or customs' official, and/or receiver, and/or receiver's agent. For through bill of lading shipments, the surveyor shall obtain Certifications of Attendance at the discharge port, any customs location where cargoes are accessed, and the delivery location. Certification at the customs location shall be signed by customs' official and/or carrier representative; and at delivery location shall be signed by the inland carrier, and/or the carrier's agent and/or the receiver.

The survey report shall note those occasions when the receiver (a representative of the private voluntary agency or government to which the cargo is being donated) is not present at discharge (for discharge surveys) or delivery (for delivery surveys.)

- (12) Bulk Commodities

(a) Conduct draft surveys:

- 1) At ports where scales are not available
- 2) On free-out shipments at the direction of CCC
- 3) At lightening operations--mother vessel and all lighter vessels

(b) Remarks should be included on scale type, date of last calibration, and any other factor which may affect the accuracy of scale weights. If scales are not used, the reason should be stated and the method of weight determination fully described.

(c) For free out bookings, distinguish between losses caused by stevedores at discharge and losses prior to discharge from vessel. Surveyor must board vessel, view cargo in stow, note any cargo suspected to be damaged, and assess any losses in stow.

(d) If cargo will be bagged and stacked by vessel interests, surveyor is required to be present to observe bagging operation and report the quantity bagged. Surveyor must document the total bag count and weight and the method of such determination. Stroke tallies must be forwarded with the survey report to document the quantity of cargo bagged and stacked.

(e) For through bill of lading bulk shipments, surveyor shall attend, monitor, and report on the loading of the cargo onto land conveyances at the discharge port for movement inland.

(f) For bulk oil and tallow, describe condition of pumps, hoses, pipes, and tanks of the vessel. Report on condition of shore tanks and/or tank trucks prior to discharge and certify that tanks are dry before discharge begins. Provide empty tank certificate(s), if available.

- (13) Lightening operations. Surveyor shall attend, monitor, and report at any lightening operations on bulk and bulk with bagging shipments.

- (14) Furnish any information which would be beneficial concerning how losses occurred and/or possible actions for future loss prevention.
- (15) Surveyor shall attend at any customs location where customs officials access cargo. Surveyor shall observe and report on the work done by the customs agents, quantify any losses observed and record before and after seal numbers of any containers opened.

## **8. DEDUCTIONS**

If the surveyor fails to perform any of the specifications for which responsible for any specific port discharge, customs location, or delivery survey, or violates any of the general terms and conditions as listed in Section 6, CCC may, at its option, deduct up to five percent of the cost of the particular discharge or delivery survey.

## **9. CONFLICT OF INTEREST**

CCC requires surveys to be conducted by independent third parties. Your company or any proposed subcontractor shall not act as the clearing or forwarding agent, or the agent for the receivers or the vessel on any surveys conducted under the contract. If your company or any proposed subcontractor will act as the clearing or forwarding agent, or the agent for the receivers or the vessel, then this constitutes a conflict of interest. The surveyor is required to inform the contracting officer of such a conflict of interest immediately after notification by CCC of the impending survey. CCC reserves the right to award the particular survey causing the conflict of interest to another surveyor. The balance of the contract shall remain in force. Failure by the surveyor to notify CCC of such conflicts of interest shall result in termination of the contract pursuant to Section 11.B.

## **10. OPTION TO EXTEND THE CONTRACT**

- A. CCC reserves the right to extend the contract, at CCC's option and with the surveyor's concurrence, for an additional year or years, at the same price structure and subject to the same terms and conditions as initially awarded. Any extensions CCC chooses to exercise shall be in one-year increments. The total duration of the contract, including the exercise of any options, shall not exceed five years.
- B. CCC shall notify the surveyor at least 60 days before the expiration date of the contract. The notification shall stipulate CCC's intention to exercise its option to extend the contract for another year, shall afford the surveyor the opportunity to accept or decline the extension, and shall require a response within 30 days from the date of the notification. The surveyor shall have the option to decline any extension CCC desires to exercise. If the surveyor declines the extension or fails to respond within the time allowed, the contract shall expire as provided in Section 6.A.

## **11. TERMINATION**

- A. For convenience

Either party may terminate the contract at any time by providing written notification at least 30 days before the termination date. CCC shall not compensate the surveyor for any incomplete or unfinished surveys.

- B. For cause

CCC may, at its option, terminate the contract if the surveyor fails to perform any of the specifications for which responsible for any specific port discharge, custom location, or delivery survey, or violates any of the general terms and conditions as listed in Sections 6 or 9. If the contract is terminated for cause, CCC shall pay the contracted price for any outstanding surveys completed under the contract, subject to Section 8. CCC shall not compensate the surveyor for any incomplete or unfinished surveys.

## **12. PAYMENT**

- A. Payment shall be issued within 30 days of the date the survey report and invoice are received, unless the

survey report fails to meet contract specifications. If the survey report fails to meet contract specifications, then payment will be issued within 30 days of the date that CCC receives the information/documentation necessary to bring the survey report into compliance with the contract specifications.

Payments issued after 30 days will include interest as set out in the Prompt Payment Act (39 U.S.C. 3901-3906).

- B. Payments may be made directly to financial banking institutions located within the United States. To receive payments electronically, Standard Form 3881, ACH Vendor/Miscellaneous Payment Enrollment Form must be completed. The Debt Collection Improvement Act of 1996 amended 31 U.S.C. 3332 to require Federal agencies to convert Federal payments from checks to electronic fund transfers no later than January 1, 1999. If you have questions, or would like this form mailed to you, contact Financial Operations Division, Payment Certification Branch, at fax number 816-823-1364 or by e-mail at <https://pcsd.usda.gov:3076/finance>.

**(At present, electronic payments cannot be made to financial institutions outside the U.S.)**

- C. Mail the survey report, in English, a complimentary copy, and invoice by regular mail to:

USDA-KCCO-EOD, STOP 8738  
Attn: Tony Holland  
P.O. Box 419205  
Kansas City, MO 64141-6205

or by express mail to:

USDA-KCCO-EOD, STOP 8738  
6501 Beacon Drive, Room G-42A  
Kansas City MO 64133-4676  
Attn: Tony Holland

- D. Your invoice should, at minimum, include the vessel name and voyage number referenced in the work order sent to you, the quantity and type of commodity surveyed, the location, and our reference number.
- E. Statements of Account submitted by firms for the purpose of tracking payments due should, at minimum, include the vessel's name and voyage number referenced in the work order sent out.

### 13. SUBMISSION OF PROPOSALS

- A. Surveyor shall submit:

1. A detailed statement addressing individually each of the technical factors listed in Section 14 (Evaluation Factors For Award)
2. A standardized rate structure (form enclosed)

Submit standardized rate structures on a net metric ton and container basis. Rates must be all-inclusive, **except for draft survey fees, customs location fees and laboratory analysis fees.** Draft survey fee and custom location fee should be listed separately in the space provided. The rates shall cover all destinations within the particular country and, for through bill of lading shipments, shall include the cost to perform the survey at the discharge port and delivery location. **All other costs**, such as telephone calls, travel expenses, faxes, courier charges, VAT, etc., must be included in the rate structure. If laboratory analysis is required, charges must be listed separately on the invoice. CCC shall pay only reasonable charges for good quality, fully documented analyses from reputable laboratories.

**NOTE: The cost for customs location work shall be expressed as a flat fee for each attendance at each customs location. If the surveyor is required to travel to the customs**

**location site and stay more than one day to complete the customs location work, that shall constitute one attendance.**

- B. Proposals shall be accepted until 3:00 p.m., Central Time, September 2, 2004. Proposals (including the detailed statement addressing the technical factors) shall be submitted by regular mail, express mail, or e-mail. Submissions by facsimile transmission shall not be accepted.

1. If submitting proposals by regular U.S. Postal Service mail, send to:

USDA-KCCO-EOD, STOP 8738  
Attn: Survey Box \_\_\_\_\_ (insert applicable country/region)  
P.O. Box 419205  
Kansas City MO 64141-6205

2. If submitting proposals by express mail, send to:

USDA-KCCO-EOD, STOP 8738  
ATTN: Survey Box \_\_\_\_\_ (insert applicable country/region)  
6501 Beacon Drive, Room G-42A  
Kansas City MO 64133-4676

3. If submitting proposals by e-mail, send to:

[laholland@kcc.usda.gov](mailto:laholland@kcc.usda.gov)

**SEPARATE, COMPLETE PROPOSALS SHALL BE SUBMITTED FOR EACH SURVEY BOX.**

- C. Firms are responsible for submitting proposals, and any modifications or revisions, so they reach the Government office designated in the solicitation by the time specified in the solicitation. Any proposal, modification, or revision received after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late offer would not unduly delay the acquisition; and

1. If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
2. There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
3. It is the only proposal received.

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

Acceptable evidence to establish the time of receipt by the Government includes the time/date stamp by the Government on the proposal wrapper, other documentary evidence of receipt maintained by the Government, or oral testimony or statements of Government personnel.

Proposals may be withdrawn by written notice received at any time before award.

Firms may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award. Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the contracting officer.

Only successful firms will be notified.

## 14. EVALUATION FACTORS FOR AWARD

**Past performance in surveying CCC-contracted U.S. Government food aid shipments, technical factors, and price shall be used by CCC to determine the successful proposals.** CCC will award contracts to the responsible firms whose proposals, conforming to the solicitation, will be most advantageous to CCC, price and other factors considered. In addition to past performance and price, the following technical evaluation factors shall be used to evaluate the proposals:

1. Sufficient staffing to cover the country/region
2. Experience
3. Access to laboratory facilities
4. Membership in affiliate organizations devoted to surveying foodstuffs
5. Customer Service

**Each factor should be numbered and addressed in order, as shown below.**

Past performance, sufficient staffing to cover the country/region, and experience **are most important and will be given the most weight** in the evaluation process. Price will be given lesser weight than past performance, staffing, and experience, but more weight than access to laboratory facilities, membership in affiliate organizations, and customer service.

### A. Evaluation Criteria for Technical Factors

1. Sufficient staffing to cover the country/region

This factor will be evaluated on the basis of the quantity of staffing devoted to performing CCC survey work in the particular country or region. The firm shall provide in its statement of technical qualifications sufficient information to address this factor.

**NOTE: The firm shall submit the particulars (company name, location[s], number of employees, contact information) of any affiliated companies or subcontracted companies which will be performing the survey work for the firm in the particular country/region.**

**NOTE: The surveyor shall provide documentary evidence that it is currently licensed by the Ministry of Transport and Equipment in the country of Djibouti to perform discharge surveys in the port of Djibouti.**

2. Experience

The firm shall submit the names of the surveyors who will be performing the work in the pertinent country/region (and discharge ports, if in different countries), showing the surveying experience, the seagoing experience, and cargo monitoring experience of each surveyor. This factor will be evaluated on the basis of the number of years of experience of the personnel performing the surveys.

3. Access to laboratory facilities

The firm shall submit the names of the laboratories used for the particular country/region and the quality standards to which the laboratories adhere. This factor will be evaluated on the basis of the quality of laboratories that may be used for analysis of cargo suspected to be unfit.

4. Membership in affiliate organizations

This factor will be evaluated on the basis of the firm's membership and level of involvement in any of the internationally recognized associations or organizations dedicated to professional cargo surveying of foodstuffs.

5. Customer Service

The factor will be evaluated on the basis of the firm's internal management oversight of all aspects of the survey process and its communication framework as it relates to communications with CCC.

Questions concerning the above may be directed to Mr. Tony Holland at [laholland@kcc.usda.gov](mailto:laholland@kcc.usda.gov).

## 15. CHANGES

Changes in the terms and conditions of this contract may be made only by written agreement of the parties. If any changes cause an increase or decrease in the cost, an equitable adjustment shall be made and modified in writing accordingly.

## 16. DISPUTES

- A. Contracts awarded under this solicitation are subject to the Contract Disputes Act of 1978 (the Act), as amended (41 U.S.C. 601-613).
- B. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this Section.
- C. "Claim" as used in this Section, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by paragraph (D) of this Section. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this Section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- D. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the contracting officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the contracting officer.

The Contractor shall provide the following certification when submitting any claim exceeding \$100,000: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

- E. For Contractor claims of \$100,000 or less, the contracting officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- F. The contracting officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- G. If the claim by the Contractor is submitted to the contracting officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the contracting

officer, in writing, of the Contractor's specific reasons for rejecting the offer.

- H. The Government shall pay interest on the amount found due and unpaid from (1) the date that the contracting officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in 48 CFR 33.201, interest shall be paid from the date that the contracting officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- I. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

Timothy L. Reaman  
Contracting Officer  
Export Operations Division  
Kansas City Commodity Office

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# STATEMENT OF WORK

## PART 1 GENERAL

### 1. PURPOSE AND COVERAGE

To provide instructions and to supplement existing procedures concerning the documentation requirements of CCC as it applies to the discharge and delivery of foreign food assistance commodities. In short, these instructions provide valuable information regarding the type of documentation necessary to pursue marine claims from a position of strength.

### 2. DEFINITIONS, ABBREVIATED TERMS, NAMES, ETC., USED IN THIS STATEMENT OF WORK

#### American Carriage of Goods by Sea Act:

COGSA. Law which covers all shipments of food aid commodities to overseas destinations.

#### Commodity Credit Corporation:

CCC

#### Inland or Interior Loss:

A loss of commodity which occurs after the cargo leaves the care, custody, and control of the ocean carrier.

#### Marine Loss:

A loss of food aid commodity, which occurs while the cargo is under the care, custody, and control of the ocean carrier or its servants or agents. This would include movement of cargoes under through bills of lading to inland destinations. Losses assessed against the ocean carrier must be noted upon discharge, and if applicable upon delivery at inland destinations. These losses should be elaborated upon when cargo can be reconstituted.

## PART 2 SURVEY AND SURVEY REPORTS

As used in this statement of work, a survey is an examination or inspection of food aid cargo made by an independent expert to determine the condition and quantity of commodities at the time of examination.

As used in these instructions, a survey report is the written evaluation or report of the examination of cargo which factually states conditions at the time of examination, and accurately and independently states the condition and quantity of food aid cargoes at the time of examination.

### 1. PURPOSE

Survey reports document the condition and quantity of cargo to fix responsibility for losses occurring while cargo is under the care, custody, and control of the vessel so that claims for such losses may be pursued from a position of strength and knowledge.

### 2. TIME AND PLACE OF SURVEY

In order to fix responsibility for losses occurring while under the care, custody, and control of the vessel (its agents or servants), it is necessary for the surveyor to examine cargo immediately before (if possible), during, and immediately after cargo is discharged from the vessel. For cargoes moving to inland destinations surveyor should examine cargo during discharge from the vessel and upon delivery at final destination.

COGSA states that the ocean carrier's liability ends "...ex-ship's tackle...;" it is therefore imperative that the condition and quantity of cargo be evaluated "...ex-ship's tackle..." For cargoes moving to inland

destinations, the Harter Act and the contract from the carriage of the goods extend ocean carriers liability to delivery at final destination.

The survey should continue through the time of reconstitution of damaged commodity, if any, to ensure that specific quantities lost may be properly and accurately recorded.

### **3. FORMAT OF DISCHARGE SURVEY REPORTS**

The format of the surveyor's report is as prescribed in the survey contract.

The surveyor's report should correspond in length to the severity of losses. For instance, if the surveyor observed the discharge of a shipment and no losses were noted, the surveyor's report would be quite short. On the other hand, if considerable losses and damages are noted, the surveyor's report should elaborate in full detail.

### **4. CONTENT OF SURVEY REPORTS, as prescribed, should include, but are not limited to the following:**

#### **A. Data Regarding the Shipment.**

1. Name of the vessel
2. Manifested quantity
3. Name of commodity
4. Stowage location
5. Port of discharge
6. Inland destination

#### **B. Dates, Times, and Places for vessel discharge:**

1. Vessel arrival
2. Vessel commencing discharge
3. Vessel completed discharge
4. Surveyor viewing cargo
5. Cargo reviewed by customs
6. Cargo delivered to consignee, if other than 1, 2 or 3
7. Reconstitution of damaged commodity

#### **C. Dates, Times, and Places for inland delivery:**

1. Cargo arrival (rail, truck, container or other),
2. Unloading commenced,
3. Unloading completed,
4. Surveyor viewing cargo,
5. Cargo reviewed by customs,
6. Cargo delivered to consignee, if other than 1, 2 or 3,
7. Reconstitution of damaged commodity.

#### **D. Amount of Cargo, at discharge, and if applicable at inland destination**

1. Discharged/delivered in sound condition,
2. Discharged/delivered in damaged condition,
3. Actual weight or, if no weigh scales are available, estimated weight, of the damaged commodity,
4. Shortlanded, not discharged from the vessel or delivered to the inland destination,
5. Weight remaining in damaged bags after reconstitution,
6. Weight missing from damaged bags after the reconstitution,
7. Determined unfit for human consumption (units and weight),
8. Destroyed, donated, or sold as unfit for human consumption.

#### **E. Narrative Analysis of who did what, when, and where**

F. Narrative Analysis of how, when, and where losses occurred

Surveyors' opinions are solicited; however, such statements should be clearly noted as opinions, since surveyors are not considered packaging technology experts. For example, if the surveyor notes 119 bags of cargo wet at discharge, the surveyor's report should contain information similar to the following:

Upon discharge of corn soy blend from Hatch No. 4 on November 16, 1998, we noted 119 bags, weighing 2,975 kilograms (as per attached tally), discharged wet. These bags were segregated, and samples gave a positive saline reaction. No explanation was given by vessel personnel or is advanced by surveyors as to how bags became wet. Commodity was analyzed by the Health Authorities on November 18, 1998, and declared unfit for human consumption. Unfitness Certificate No. 123456 is attached to this report. The remaining contents of 119 bags, weighing 390 kilograms, were fit for animal consumption and donated to the XYZ pig-breeding farm.

OR

Upon discharge of bags of sorghum from Hatch No. 4 on November 16, 1998, 119 bags, weighing 2,975 kilograms, were discharged wet, torn, and slack. These bags were segregated and tests gave a negative saline reaction. Vessel personnel advised that the bags could have been loaded wet as heavy showers occurred at the loading port of Corpus Christi. In our opinion, the bags became wet because of inadequate dunnage and what little dunnage was available was green and oozing. A representative sample of wet damaged cargo was drawn by surveyors, in the presence of ship's agents, on November 21, 1998, and representative samples from the 15 wet and partially caked bags were hand delivered to the local health authorities laboratory for analysis. Their enclosed Ministry of Health report found the commodity fit for human consumption, and the bags were accepted by the consignee. Container number 1234 arrived at final destination warehouse on November 20, 1998. On November 21, 1998, at 09:30 destuffing commenced. The seals were noted as being intact and the seal numbers were noted on our attached container listing. Present for the destuffing, listed by name and signature, as follows, were surveyor representative, receiver, warehouse manager, inland contractor/ocean carriers agent, etc. Exterior condition of the container was noted acceptable without notable exception. Upon opening of the doors 10 bags of corn soy blend were noted as torn and half empty along top of stowage. In our opinion, these torn bags occurred while the container was stuffed. Twenty bags of corn soy blend were noted as torn and slack along the container walls probably due to a shift in stowage during the inland transport. A total of 15 bags of corn soy blend were noted as wet and caked. These bags were found on the bottom layer of the floor of the container. This was due to apparent inadequate dunnage to protect cargo from changing temperature and condensation.

On November 21, 1998, the torn bags were taped, repaired, and weighed using the warehouse scales. A total of 250 kgs were noted as net slackage loss. Sweepings of spillage were bagged and weighed as 125 kgs. All parties present agreed and signed the attached Statement of Obvious Unfitness for Human Consumption. The sweepings were donated to local charity for use as animal feed. Representative samples from the 15 wet and partially caked bags were hand delivered to the local health authorities laboratory for analysis. Their enclosed Ministry of Health report found the commodity fit for human consumption, and the bags were accepted by the consignee.

G. Comments and Analysis of:

1. Quality of stevedore labor, (responsible for loading & unloading ships, railcars, trucks, or other)
2. Quality of discharging techniques,
3. Quality of cargo handling techniques for loading and unloading of railcars, trucks, or other, while under transshipment from foreign discharge port to the inland destination
4. Acceptability of dock and storage area for foodstuffs,
5. Quality of stowage (vessel hold, railcar, truck, container, or other).

H. Stroke Tallies substantiating quantity discharged/received and establishing quantities missing or damaged.

I. List of Persons who witnessed vessel discharge and if applicable inland delivery and/or who can testify as to the factual situation.

## **5. CCC COMMUNICATION AND CONTRACT WITH SURVEYOR**

CCC will employ independent professional surveyors who will not only observe discharge, and if applicable, the delivery and prepare a report, but who will also provide other services which will be of major worth. For instance, a surveyor should supervise or superintend the discharge, and if applicable, the delivery of cargo rather than simply observe it. This does not imply that he should attempt to tell all concerned what to do, but it does imply that he would not stand idly by allowing cargoes to be damaged through destructive practices. The surveyor's narrative analysis of conditions during the period of, for example, vessel discharge, should include detailed references to the level or degree of cooperation, or lack thereof, from vessel and/or vessel's local agent(s).

The surveyor should be the eyes and ears of CCC at the ports of discharge, and if applicable, the inland delivery location and should make recommendations to the agencies which could possibly result in fewer losses to the program. Surveyors should work in conjunction with the receiver/Private Voluntary Organization (PVO) to ensure that suspect cargoes are promptly analyzed by proper Health Authorities, and be given the responsibility for obtaining various Certificates for unfitness, donations, shortlandings, and etc.

A professional job is expected from a professional firm. The port area is the surveyor's work area and they should know better than anyone what actions should be taken to ensure that cargo moves through the port with the fewest losses possible and, when losses do occur, what actions, statements or documents are available and need to be obtained to substantiate a claim against the liable party. These expectations of performance by the surveyor would also carry through to any inland destinations.

Surveyors should be aware that their reports will be utilized to document marine claims against ocean carriers. Surveyors should understand that they may be called upon in the future:

1. To clarify certain unclear issues with regard to the discharge or delivery of cargo contained in your report.
2. To furnish depositions for use in litigation of cargo loss and damage claims.
3. To appear, in rare instances, as a witness in a United States court of law.
4. The surveying firm should work closely with CCC to ensure that all services expected by CCC are understood by the surveyor and to ensure that the surveyor is providing timely high quality service.

## **6. IMPORTANT CONCERNS OF CCC**

CCC will engage an independent surveyor to determine the amount and condition of the cargo upon discharge from the vessel, and if applicable, at inland delivery locations. Generally speaking, we have found that some parties may depend upon the carrier to furnish them with the survey or outturn reports. In other cases, surveyors have obtained only customs documents, port authority reports, or delivery reports. While we are in favor of obtaining all possible information concerning a loss, including the carrier's survey or outturn reports, statements from the consignees, statements from port authorities, customs authorities, statements from the receiving warehouse, or any other such supporting documentation, the furnishing of these documents does not independently negate the surveyors' responsibility to provide an independently observed report of their findings. Documentation, as discussed above, should be considered as additional information instead of as a substitute for an independent survey report. It is CCC's desire to contract with surveying companies that are competent, well recognized experts in preparing as well as obtaining proper documentation.

The importance of timely independent documentation cannot be overemphasized. Under United States law the ocean carrier is not liable for losses occurring after the cargo leaves the care, custody, and control of the carrier. Documentation said to be prepared upon delivery of cargo, which includes inland losses incurred subsequent to the cargo leaving care, custody, and control of the carrier, creates a number of problems. The inclusion of such losses in claims against the ocean carrier creates severe factual disputes which delay settlement of the claims to the monetary disadvantage of the U.S. Government. In addition, it results in a reduction of the interior losses which receivers/PVO's are required to report in accordance with applicable regulations.

One of the highly problematic results of untimely documentation is a claims pursuit and recovery program that is severely disadvantaged. The burden of proof is upon CCC as the claimant to prove that the losses

asserted are the liability of the carrier. In the absence of firm evidence to prove that the losses occurred when the cargo was under the care, custody, and control of the carrier, successful litigation is virtually impossible. When CCC is denied the possibility of legal action to enforce monetary recovery through collection, CCC is deprived of one of our most important tools of collection. CCC's many years of claims experience has proven vividly that the best loss prevention device is a strong and effective claims collection program. In other words, if CCC is given the tools in the way of timely and complete documentation to aggressively and effectively collect claims for cargo loss and damage from ocean carriers, carriers will exercise more care and concern with an efficient and effective performance in the stowage, carriage, discharge, and inland delivery of food aid cargo. U.S. sponsored food aid assistance programs will benefit by receiving more usable commodities in the recipient countries.

### **PART 3 MITIGATION OF DAMAGES**

#### **1. Definition**

A. "To mitigate" means:

1. To lessen in force or intensity,
2. To moderate the severity of anything distressing.

B. With reference to these Instructions, mitigation of damages applies to the expending of prompt and proper efforts to ensure that losses caused by the ocean carrier are kept to a minimum by the reconstitution and utilization of as much good commodity as possible.

#### **2. PURPOSE**

U.S. food aid commodities are made available to relieve human suffering and for the feeding of starving people. From a humanitarian and program point of view, damages must be mitigated to ensure that as much commodity as possible reaches the intended program participant.

In any loss or damage situation, and specifically concerning the pursuit and adjudication of ocean transportation claims, a commonly accepted premise of law is that the injured party must take reasonable actions to ensure that the loss does not increase. If damages increase because of the injured party's failure to take actions considered normal and reasonable for that locale, such increased damages are not legally claimable against the ocean carrier. From a claims point of view, damages must be promptly mitigated to determine exact losses attributable to the ocean carrier.

#### **3. RESPONSIBILITY**

A. Receivers/PVO's have the primary responsibility to ensure that damages are promptly mitigated.

B. The independent surveyor should assist the receiver/PVO in mitigation of damages.

C. The responsibility for prompt and proper mitigation of damages must be taken very seriously in view of:  
The fact that foodstuffs are susceptible to spoilage.  
The fact that many areas do not have sophisticated equipment and facilities.

#### **4. EXAMPLES OF PROPER MITIGATION OF DAMAGES**

A. Ocean carrier discharged 300 bags of corn soy blend in torn and slack condition on November 18, 1998. At discharge the surveyor estimated that the torn and slack bags were missing 1/6 of their contents. Cargo remaining in torn and slack bags was not contaminated with foreign substance and not suspected to be unfit for human consumption. Remaining cargo was reconstituted into 230 bags (25 kgs each) on November 20, 1998.

Damages in this situation were properly mitigated. The loss of 70 bags of cargo due to slackage is well documented as being for the account of the ocean carrier. CCC will be able to pursue monetary recovery against the ocean carrier from a position of strength.

## 5. EXAMPLES OF IMPROPER MITIGATION OF DAMAGES

- A. Ocean carrier discharged 300 bags of corn soy blend in torn and slack condition on November 18, 1998. At discharge the surveyor estimated that the torn and slack bags were missing 1/6 of their contents. Cargo remaining in torn and slack bags was not contaminated with foreign substance and was not suspected to be unfit for human consumption. Remaining contents in torn and slack bags were not reconstituted until December 20, 1998, when such remaining contents (which were determined fit for human consumption) were filled into 200 bags (25 kgs each).

Damages in this situation were not promptly and properly mitigated as 33 days elapsed between the time the carrier's liability ended and the time cargo was reconstituted. The loss of 100 bags of cargo due to slackage will be claimed and pursued against the ocean carrier. However, CCC's ability to pursue monetary recovery against the ocean carrier from a position of strength would probably be compromised due to the following:

1. We do not know the exact amount of slackage loss at time of discharge, and
2. Additional losses to the 300 bags of cargo could have easily occurred after the cargo left the custody of the vessel.

- B. Ocean carrier discharged 300 bags of corn soy blend in torn and slack condition on November 18, 1998. At discharge the surveyor estimated that the torn and slack bags were missing 1/6 of their contents. Cargo remaining in torn and slack bags was not contaminated with foreign substance and was not suspected to be unfit for human consumption. Remaining contents of the slack and torn bags were not reconstituted until January 4, 1999. At that time, the local health authorities condemned the cargo as unfit for human consumption.

The loss of 50 bags of commodity due to slackage is properly claimable against the ocean carrier. The loss of the remaining contents, which were unfit for human consumption, is not properly claimable against the ocean carrier as damages in this situation were not promptly and properly mitigated.

## 6. CCC CONCERNS AND PAST DEFICIENCIES

- A. Situations similar to the example shown in Paragraph 5. B. of these instructions are unacceptable to CCC. Failure to promptly and properly mitigate damages deprives receiver/PVO of badly needed food. CCC has a firm commitment to reducing losses to a minimum and to being in a position to pursue claims against liable parties from a position of strength. We request on all shipments that the survey firm, in coordination with the receiver/PVO, be fully aware of responsibilities regarding mitigation of damages and take appropriate actions.
- B. In some instances, extenuating circumstances occur which prevent the receiver/PVO from promptly and properly mitigating damages. It is also possible that because of actions or inactions of the ocean carrier or its agents that the ocean carrier could conceivably remain liable for the entire 300 bag loss detailed in the example in Paragraph 5. B. In these instances, it is imperative that the surveyor provide a narrative and chronology of events which:
1. Justifies why losses could not be properly mitigated and/or
  2. Explains circumstances which would allow CCC to pursue, from a position of strength, monetary recovery against the ocean carrier for the entire loss.

## 7. RECEIVER/PVO DECISIONS REGARDING UTILIZATION OF COMMODITIES

- A. Receiver/PVO has the final decision as to whether to utilize cargoes in approved programs.
- B. NOTHING in these instructions should be construed as requiring or even suggesting that less than wholesome food products be placed into distribution channels.

## **PART 4 DOCUMENTATION NECESSARY TO PROVE COMMODITIES UNFIT FOR HUMAN CONSUMPTION**

The following instructions relate to the documentation necessary to prove the ocean carrier liable for the loss of commodities, which arrive in a condition that renders them unfit for human consumption. It is imperative that the determination of unfitness of commodities be issued by an individual or entity who is legally qualified either by position or education to make such determination. For instance, a good faith statement by a receiver/PVO representative or even a surveyor does not, in and of itself, prove unfitness because such persons are not legally qualified to make a statement.

### **1. CERTIFICATION BY HEALTH AUTHORITIES**

If the discharge port or inland destination authority employs an individual whose responsibility is to make determinations of fitness and unfitness of incoming cargoes, receiver/PVO in coordination with the surveyor should:

- A. Promptly notify Health Authority of the discharge/delivery of suspect commodities,
- B. Request that Health Authority review and analyze such suspect commodities,
- C. Obtain a written statement or certificate from the health authorities which includes, but not be limited to:
  1. Name of the vessel, or description of inland delivery conveyance,
  2. Date of discharge from the vessel, or delivery at inland location,
  3. Date of examination of suspect cargo,
  4. Location of where samples were taken (name of warehouse, container number, etc.),
  5. Location of where samples were analyzed,
  6. Amount (bags, cartons, and/or kgs) of cargo examined,
  7. Amount of cargo fit for human consumption,
  8. Amount of cargo unfit for human consumption,
  9. Reason(s) why cargo is unfit for human consumption,
  10. Advice as to whether cargo is fit for animal consumption,
  11. Signature and title of person making determinations.

### **2. ANALYSIS BY INDEPENDENT CHEMIST OR PRIVATE LABORATORY**

If the discharge port or inland destination locale does not employ a health official, the receiver/PVO in coordination with the surveyor should employ an independent chemist or private laboratory to analyze suspect cargoes.

- A. Samples of suspect cargoes:
  1. Must be representative of the quantity of suspect cargo. For instance, a one or two pound sample taken from one bag of commodity would not be representative for an analysis which could result in the contents of 50 bags not being utilized in the program,
  2. Should, if at all possible, be drawn jointly by the receiver/PVO, surveyor, and the ocean carrier's agents,
  3. Should be properly identified as to which samples came from which cargoes,
  4. Should be properly sealed to protect the integrity of the sample,
  5. Should be promptly forwarded to the chemist or laboratory.
- B. The report from the chemist or private laboratory should clearly identify each of the samples analyzed, and should contain similar information to that enumerated in Paragraph 1.
- C. The cost of such an analysis and report from the chemist or private laboratory will be reimbursed to the survey firm by CCC pursuant to the contract terms.

### **3. CARGOES OBVIOUSLY UNFIT FOR HUMAN CONSUMPTION**

What is obvious to one individual, at a point and place in time, is not similarly obvious to another party six months later and thousands of miles away. It is therefore necessary, that even obviously unfit cargoes should be documented as such.

- A. Surveyor should obtain documentation as detailed in Paragraph 1 or 2, OR
- B. Obtain a statement, similar to that required in Paragraph 1, which is signed by the receiver/PVO representative AND a representative of the ocean carrier AND the surveyor which specifically states that all individuals agree that the cargo is unfit for human consumption.

### **4. TIMELINESS OF DOCUMENTATION**

As has been stated throughout these instructions, the MOST IMPORTANT element of a successful claims pursuit and recovery program is the surveyor's documentation which is based upon the analyses of cargo at the time the ocean carrier's liability ends, e.g., ex ship's tackle or upon delivery at inland destination. This is especially true in documenting a claim for unfitness. Survey reports should state that a certain quantity of cargo is suspected as being unfit for human consumption.

- A. If possible, cargo should be viewed and analyzed by proper authorities while in vessel's holds, and then again immediately upon discharge.
- B. If port conditions or customs do not allow for such prompt viewing, analyses should be made as soon as possible after discharge.
- C. In cases where cargoes are noted by the surveyor as being damaged on board the vessel and where such cargoes are later declared unfit for human consumption, a cause-effect relationship exists between carrier damage and declaration of unfitness. The key to this cause-effect relationship is the time involved between discharge and the declaration of unfitness. For instance:
  - 1. If damaged cargo is discharged on November 20, and the same cargo is declared unfit for human consumption on November 25, the cause-effect relationship can normally be established, and collection for such losses can be pursued, by CCC, from a position of strength.
  - 2. If that same damaged cargo is declared unfit on December 15, or many days after discharge, the cause-effect relationship weakens and collection possibility decreases considerably.
  - 3. If the damaged cargo is not determined unfit until January 25, the cause-effect relationship is virtually diminished and little, if any, possibility exists for monetary recovery. In both the latter examples, the question arises as to whether the receiver/PVO properly and promptly mitigated the damages. A detailed narrative statement should be forwarded, in these cases, to CCC explaining why damaged cargoes were not promptly analyzed and/or reconstituted.

## **PART 5 CARGOES MANIFESTED BUT NOT DISCHARGED**

### **1. SHORTLANDING OF CARGO**

The failure of an ocean carrier to discharge and deliver cargo which was loaded onto the vessel is a serious breach of the contract of carriage between the shipper and the ocean carrier. Monetary recovery for losses of cargo due to shortlanding is vigorously pursued.

- A. Various documents are issued at ports which document shortlandings. Some are appropriately called shortlanding certificates; others have less descriptive titles. Survey firms acting on behalf of CCC should obtain copies of such official port certifications which show the quantity of cargo shortlanded.
- B. Paragraph 4 in Part 2 describes the contents of a survey report. Specific quantities of cargo discharged and delivered should be noted and tallies verifying the quantity should be included. The surveyor should ensure sufficient labor is engaged to obtain an accurate discharge tally, and if applicable an inland delivery tally.

- C. In the event that cargo reported as shortlanded is subsequently located, documentation to show the recovery of such cargo should be issued and forwarded to CCC on the earliest possible date. Documentation to reflect such recovery is required so that the ocean carrier's liability may be appropriately reduced so that CCC will not be pursuing a claim for shortages that no longer exist.

## **PART 6 MISCELLANEOUS DOCUMENTS AND REQUIREMENTS**

### **1. NOTICE OF PROTEST**

- A. Applicable law requires that the ocean carrier, or their agent, be notified within three (3) days after discharge, that shortages and/or damages to cargoes have occurred.
- B. The surveyor, in coordination with the receiver/PVO, shall notify the ocean carrier or their agents in writing.
- C. Such notification should include:
  - 1. Date of notification,
  - 2. Name of the vessel,
  - 3. Description of cargo,
  - 4. Estimation of quantity lost or damaged.

### **2. BULK CARGOES**

- A. Documenting shortages on shipments of whole grains and edible oil in bulk has long been a concern because some discharge ports and or inland destinations do not have adequate or reliable facilities to properly measure the quantity of cargo discharged from the vessel or inland mode of conveyance. Additional factors such as the fact that bulk grains will gain or lose weight depending upon relative moisture in the air, and the fact that discharge port scales are often not properly maintained and therefore are of questionable accuracy, negatively impact CCC's pursuit of such shortage claims, from a position of strength. Surveyor should prepare a detailed narrative analysis stating, in his opinion, when, where, and how shortages may have occurred.
- B. Notwithstanding the above, for free out bookings the surveyor must distinguish between the losses caused by the stevedores at discharge and the losses prior to discharge from the vessel. The surveyor must board the vessel, view cargo in stow, and note any cargo suspected to be damaged, and assess any losses in stow.

### **3. CONTAINERIZED CARGOES**

Many shipments are now containerized rather than breakbulk. Generally speaking, the use of containers reduces the amount of handling for individual bags of cargo; thereby, reducing the possibility of losses. When cargoes arrive in container vans, the surveyor shall:

- A. List the container van numbers and the appropriate seal numbers.
- B. Advise whether the container vans were in any way damaged.
- C. Forward information (either in the survey report or in a narrative statement) as to when and where the seals on the vans were broken and by whom.
- D. Attend the discharge of the container vans from the vessel, if applicable, as well as at the time cargo is removed from the container van.
- E. Prepare a survey report in accordance with paragraph 4, Part 2.

#### **4. EXCESS-LANDED CARGOES**

- A. Definition: Cargoes which are either discharged at port or delivered to inland destination in excess of the manifested bill of lading quantity.
- B. Document the receipt of such excess-landed cargo and advise CCC noting the following:
  - 1. Quantity of excess cargo,
  - 2. Condition of cargo,
  - 3. Date and place when excess commodity was discovered,
  - 4. Narrative analysis, in surveyors opinion of, how or why there is excess cargo,
  - 5. Disposition of excess cargo, e.g. who took possession of excess cargo.

#### **5. DISPOSITION OF CARGOES DETERMINED UNFIT FOR HUMAN CONSUMPTION**

- A. Ensure that commodities are not utilized for human consumption.
- B. Receiver/PVO, in coordination with the surveyor, should obtain a statement showing the disposition of commodities, in any case, when commodities are not utilized for the purpose intended. The statement should include the date, quantity of commodity, and name of purchaser or donee, along with the following:
  - 1. If sold, a copy of the sales invoice, showing the sales price and the rate of exchange.
  - 2. If donated, a copy of the receipt signed by the donee.
  - 3. If destroyed, a copy of the destruction certificate showing the names of the individuals witnessing the destruction.

#### **6. LIGHTERAGE**

Lighterage is a method of discharging cargoes from a heavy draft vessel which cannot (because of shallow-draft port conditions) or does not (for whatever reasons) come into the port area and discharge cargoes onto the dock area. When cargoes are lightered ashore, the mother vessel discharged cargo into a smaller vessel (a lighter) and the lighter carries the cargo ashore and places the cargo onto the docks. Generally speaking, cargoes that are lightered are at higher risk for loss and damage. Therefore, the surveyor should perform survey as cargo is discharged into the lighters as well as when cargo is discharged from the lighters.

- A. Responsibility for lighterage losses must be determined by the local laws and customs of the port. As a general rule, the person requesting and paying for lighters is responsible for lighterage losses. Thus, if the ocean carrier chooses to discharge cargo into lighters, the ocean carrier is responsible for all losses until cargo is placed upon an acceptable wharf. Thus the losses would be considered a marine loss and such losses should be documented in the survey report and forwarded to CCC.

#### **7. CARRIER OUTTURN REPORT**

- A. Definition: A document prepared by the vessel or the vessel's agents showing, in their opinion, the condition and quantity of cargo discharged from the vessel and/or at the inland destination.
- B. Surveyors should attempt to obtain a copy of the outturn report.
- C. Surveyor should compare the carrier's outturn report with their own independently observed survey report, note discrepancies and, through communication with the vessel's agents, attempt to resolve discrepancies. If discrepancies cannot be resolved, communications should be initiated to determine why discrepancies exist.
- D. Surveyors should advise CCC of the results of such communications by facsimile or e-mail.
- E. Surveyors are not permitted to substitute the vessel's outturn report for the required independent survey report.

## **8. OFFICIAL PORT RECORDS**

- A. Some ports of discharge prepare a complete set of documents showing the quantity and condition of cargo when it is received by the port.
- B. When such documents can be obtained, surveyors should obtain and forward such documents.
- C. Surveyors are not permitted to substitute official port records for an independently observed report of their findings.

## **PART 7 SUBMISSION OF REPORT**

### **1. WHAT AND WHERE TO SUBMIT**

- A. Forward the originals of all documents, if available, including, but not limited to, survey reports, carrier outturn reports, surveyors original notes, original stroke tallies, and various port documents to CCC. If originals are not available, forward legible signed copies.
- B. When forwarding documents or correspondence prepared in a language other than English, survey firm must also forward a literal English translation.

### **2. WHEN TO SUBMIT**

- A. In accordance with contract terms, all documentation concerning the marine loss and damage of humanitarian food aid cargoes should be submitted as a package to CCC as soon as all such documents are available. Our expectation is that all parties involved (surveyor, receiver/PVO, and local authorities) will work together to quickly resolve any issues concerning disposition of damaged cargo, and obtaining necessary disposition documentation.
- B. For survey contracts covering multiple vessels and/or destinations, survey firms must prepare and submit separate survey reports for each vessel or inland destination, unless otherwise directed by CCC.
- C. If the survey firm encounters undue delay in finalizing their report, for circumstances beyond the control of the surveyor, the survey firm will immediately advise CCC of the reason(s) for the delay, the expected time required for resolution, and date the finalized report will be submitted to CCC.