

2. CONTRACT (Proc. inst. ident.) NO. DTMA1C08044	3. EFFECTIVE DATE 09/17/2008	4. REQUISITION/PURCHASE REQUEST PROJECT NO. PR200080061
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5. ISSUED BY CODE 00091 DOT/Maritime Administration, MAR-380 1200 New Jersey Ave SE, MAR380 W26-429  Washington, DC 20590-	6. ADMINISTERED BY (If other than Item 5) CODE
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7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Fisher Maritime Transportation  147 Columbia Tpk. Ste. 203 Florham Park, NJ 07932-2188	8. DELIVERY <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other (See below)
	9. DISCOUNT FOR PROMPT PAYMENT 10 days % 20 days % 30 days % days %
	10. SUBMIT INVOICES (4 Copies unless other - wise specified) To THE ADDRESS SHOWN IN: ITEM 12

11. SHIP TO/MARK FOR CODE HQ226 Thelma B. Goldring DOT/Maritime Administration, MAR-220 1200 New Jersey Ave., SE  Washington, DC 20590-	12. PAYMENT WILL BE MADE BY CODE DOT/ Enterprise Services Center (ESC) OFO/FAA, Oklahoma City MARAD A/P Headquarters Invoices Branch AMZ-150 PO Box 25710  Oklahoma City, OK 73125-
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) (2 ) <input checked="" type="checkbox"/> 41 U.S.C. 253(c) (3 )	14. ACCOUNTING AND APPROPRIATION DATA 7008 - - 175000 - 2008 - 12 - AGAK - - 00100000 - 122000 - - 25305 - - 6100 - 6600 - 11 - - N86557
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	<b>SEE LINE ITEM DETAIL</b>				

**15G. TOTAL AMOUNT OF CONTRACT** 100,000.00

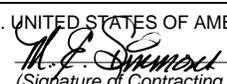
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**CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE**

17.  CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing office)  
Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as attached or incorporated by reference herein.  
*(Attachments are listed herein.)*

18.  AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number \_\_\_\_\_ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER M. E. Simmons
19B. NAME OF CONTRACTOR By _____ <i>(Signature of person authorized to sign)</i>	19C. DATE SIGNED
20B. UNITED STATES OF AMERICA By  <i>(Signature of Contracting Officer)</i>	20C. DATE SIGNED 09/18/2008

<b>Line Item Summary</b>	<b>Document Number</b> DTMA1C08044	<b>Title</b> Legal Expert Services	<b>Page</b> 2 of 14
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**Total Funding:** \$100,000.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
7008	175000	2008	12	AGAK		00100000	122000		25305		6100
<b>Division</b>	<b>Closed FYs</b>	<b>Cancelled Fund</b>									
6600	11	N86557									

Line Item Number	Description	CLIN Ref	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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0001	Management Consulting Expert Services	0001		1.00	NTE	\$100,000.000	\$ 100,000.00
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(09/22/2008 to 09/30/2009)

REQUEST TO HIRE THE SERVICES OF AN EXPERT.

To provide expert advice and litigation support with respect to the litigation Matters involving issues relating to the operations of the NDRF particularly with respect to the operations of the Suisun Bay Reserve Fleet, but also with reference to the NDRF fleets in the James River, VA and Beaumont, TX. Work to be performed in accordance with the statement of work and fee schedule.

The Labor Category with Fixed rates, and Confidentiality Agreement is attached. The contractor shall sign and return the Confidentiality Agreement.

Ref Req No: PR200080061

Funding Information:

7008 - - 175000 - 2008 - 12 - AGAK - - 00100000 - 122000 - -  
 25305 - - 6100 - 6600 - 11 - - N86557  
 \$100,000.00

0002	Option period October 1, 2009, through September 30, 2010	0002		1.00	NTE	\$ .000	\$ 0.00
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(10/01/2009 to 09/30/2010)

OPTION PERIOD

REQUEST TO HIRE THE SERVICES OF AN EXPERT.

To provide expert advice and litigation support with respect to the litigation Matters involving issues relating to the operations of the NDRF particularly with respect to the operations of the Suisun Bay Reserve Fleet, but also with reference to the NDRF fleets in the James River, VA and Beaumont, TX. Work to be performed in accordance with the statement of work and fee schedule.

Ref Req No: PR200080061

Funding Information:

7008 - - 175000 - 2008 - 12 - AGAK - - 00100000 - 122000 - -  
 25305 - - 6100 - 6600 - 11 - - N86557  
 \$0.00

**Total Cost:** \$100,000.00

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## SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

### C.1 STATEMENT OF WORK

#### 1. Statement of Work to be performed:

These cases involve issues relating to the operations of the National Defense Reserve Fleet (NDRF) particularly with respect to the operations of the Suisun Bay Reserve Fleet (SBRF), but also with reference to the NDRF fleets in the James River, Va. (JRRF) and at Beaumont, Texas (BRF). Allegations have arisen that the vessels in the NDRF, particularly those vessels that have been determined to be of insufficient value to merit further preservation (non-retention vessels) are being maintained and operated in violation of the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and California State law, and without compliance with the National Environmental Policy Act (NEPA). Suit has already been filed on these grounds, Arc Ecology, et al. v. United States Maritime Administration, Case No. 2:07-cv-GEB-GGH (E.D.Cal.) and notice of an intention to sue has been received from the California Regional Water Quality Control Board, San Francisco Bay Region. (Hereinafter referred to as the Litigation Matters). Your firm is being retained to provide expert advice and litigation support with respect to the Litigation Matters. At the direction of the U.S. Department of Justice (DOJ) attorney on this case or the attorney for the Maritime Administration, with the concurrence of the contract COTR, the anticipated work will include (a) review of site-specific documents pertaining to the environmental conditions at the NDRF fleet sites; (b) review of documents and information obtained during discovery in the case as well as any other relevant material made available; (c) preparation of expert report(s) if requested by counsel; and (d) testimony at deposition and/or trial, if necessary.

Specific technical directions will be issued by the COTR with respect to the work to be performed under this contract. The general subject matters of the work scope are set forth as follows:

- (a) **Contaminants:** Identify contaminants that may be leaching or being emitted via other mechanisms from NDRF vessels into California waters; estimate quantities of source materials that may be remaining on the vessels; ascertain rate and/or concentration at which the remaining contaminants may be leaching or entering into the waters around the vessels; compare those leach or discharge rates and/or concentrations with rates that fall within applicable regulations and guidelines.
- (b) **Removal/Abatement Mechanisms:** Identify all candidate methodologies that can be used for removal/abatement of such materials from the vessels; identify environmental risks associated with each such process; estimate schedules and costs for each candidate methodology for a sample ship selected from the NDRF; and estimate costs for substitution of alternate materials (if needed for preservation) to allow 20-year remaining life of the vessels.
- (c) **Drydocking:** If the vessel would need to be drydocked for the purpose of removal of the contaminating materials, estimate the schedule and cost to survey the vessel to ensure its suitability for drydocking; estimate the schedule and cost of relocating the vessel to a suitable drydock; estimate the schedule and cost of accomplishment of the drydocking, contaminant removal and disposal; and estimate the schedule and cost of returning the cleaned vessel to the nearest suitable NDRF location.
- (d) **Encapsulation Mechanisms:** Identify all candidate methodologies that can be used to encapsulate such contaminant materials; identify environmental risks associated with each such process; estimate life of such encapsulation mechanisms; estimate schedules and costs for each candidate methodology for a sample ship selected from the NDRF.
- (e) **Transportation Mechanisms:** Identify site(s) that are less environmentally sensitive to the leaching or discharge of the previously identified contaminant to which the same vessels, if unaltered, can be relocated; estimate the schedule and cost for all candidate mechanisms for the relocation of vessels from the California NDRF site.
- (f) **Cost Comparisons:** Conduct comparative cost estimates for each of the potentially viable mechanisms to mitigate the leaching or discharge of contaminants into California waters.
- (g) **Implementation:** If authorized to proceed with any or a combination of the selected mitigation mechanisms; prepare the specifications for each such process for each appropriate vessel; develop solicitations for competitive bids for the accomplishment of each selected process; and provide management and oversight of the accomplishment of each mechanism for each selected vessel.
- (h) **Additional Work:** Such other work as provided in the technical directions as is reasonably incident to addressing the issues raised in or relating to the Litigation Matters:

#### 2. Anticipated Work Products:

During the performance of this work, it is anticipated that work products/technical directions are likely to include:

- (a) Review of documents and communication with the DOJ attorney and counsel for the Maritime Administration;
- (b) Memoranda, and/or reports describing your analysis and findings as well as suggestions for further technical directions;
- (c) Attendance and participation in meetings (internal to the Federal Government as well as with private parties as requested)
- (d) A site visit to the SBRF;
- (e) Preparation of expert report(s) and testimony at deposition and/or trial, if necessary.

#### 3. Schedule

It is expected that this work will be performed during Fiscal Year 2008, 2009, and 2010.

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4. Cost Structure:

The work will be performed on a time and materials basis, with invoices submitted on a monthly basis according to Fisher Maritime's hourly rates and terms for the individuals set forth as Attachment A. These rates are fully burdened rates. It is anticipated that Kenneth Fisher will be the principle expert, but he will be assisted by the staff indicated in the attached hourly rate structure for Fisher Maritime. If additional staff work on the project is necessary, an amended Statement of Work will be submitted indicating hourly rates along with a confidentiality statement for each staff person.

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SECTION E -- INSPECTION AND ACCEPTANCE

E.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

<http://acquisition.gov/far/current/html/FARTOCP52.html>

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.246-06	Inspection--Time-and-Material and Labor-Hour	May 2001

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SECTION G -- CONTRACT ADMINISTRATION DATA

G.1 INVOICE SUBMISSION

The contractor shall submit invoices to one the below address:

U.S. MAIL: MARAD A/P HQ INVOICES

BRANCH, AMZ-150

PO BOX 25710

Oklahoma City, OK 73125

or

EMAIL: MARADINVOICES@FAA.GOV in Adobe format only (.pdf)

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## SECTION I -- CONTRACT CLAUSES

### I.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

<http://acquisition.gov/far/current/html/FARTOCP52.html>

Clause	Title	Date
52.202-01	Definitions	July 2004
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	April 1984
52.203-07	Anti-Kickback Procedures	July 1995
52.204-04	Printed or Copied Double-Sided on Recycled Paper	August 2000
52.204-07	Central Contractor Registration	April 2008
52.209-06	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	September 2006
52.215-08	Order of Precedence--Uniform Contract Format	October 1997
52.216-07	Allowable Cost and Payment	December 2002
52.216-25	Contract Definitization	October 1997
52.217-08	Option to Extend Services	November 1999
52.219-06	Notice of Total Small Business Set-Aside	June 2003
52.219-08	Utilization of Small Business Concerns	May 2004
52.219-27	Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside	May 2004
52.222-03	Convict Labor	June 2003
52.222-26	Equal Opportunity	March 2007
52.222-41	Service Contract Act of 1965	November 2007
52.222-43	Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)	November 2006
52.222-44	Fair Labor Standards Act and Service Contract Act - Price Adjustment	February 2002
52.223-06	Drug-Free Workplace	May 2001
52.223-09 Alt I	Estimate of Percentage of Recovered Material Content for EPA Designated Items (MAY 2008) - Alternate I	May 2008
52.223-14	Toxic Chemical Release Reporting	August 2003
52.225-13	Restrictions on Certain Foreign Purchases	June 2008
52.229-03	Federal, State, and Local Taxes	April 2003
52.232-17	Interest	June 1996
52.232-18	Availability of Funds	April 1984
52.232-23	Assignment of Claims	January 1986
52.232-25	Prompt Payment	October 2003
52.232-33	Payment by Electronic Funds Transfer-Central Contractor Registration	October 2003
52.233-01	Disputes	July 2002
52.233-03	Protest after Award	August 1996
52.243-03	Changes--Time-and-Material or Labor-Hours	September 2000
52.244-06	Subcontracts for Commercial Items	March 2007
52.249-06 Alt IV	Termination (Cost-Reimbursement) (May 2004) - Alternate IV	September 1996
52.249-06 Alt V	Termination (Cost-Reimbursement) (May 2004) - Alternate V	September 1996

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52.249-14	Excusable Delays	April 1984
52.250-01	Indemnification Under Public Law 85-804	April 1984
52.252-06	Authorized Deviations in Clauses	April 1984
52.253-01	Computer Generated Forms	January 1991

I.2 52.216-24 LIMITATION OF GOVERNMENT LIABILITY APRIL 1984

- (a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding 100,000 dollars.
- (b) The maximum amount for which the Government shall be liable if this contract is terminated is 100,000 dollars.

I.3 52.217-09 OPTION TO EXTEND THE TERM OF THE CONTRACT MARCH 2000

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days ; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 30 months.

(End of clause)

I.4 52.227-17 RIGHTS IN DATA-SPECIAL WORKS JUNE 1987

(a) Definitions.

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have--

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

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(c) Copyright. (1) Data first produced in the performance of this contract.

(i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

I.5      52.232-07      PAYMENTS UNDER TIME-AND-MATERIALS AND      FEBRUARY 2007  
LABOR-HOUR CONTRACTS

The Government will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative:

(a) Hourly rate. (1) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control.

(2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.

(3) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

(5) Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

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- (i) Individual daily job timekeeping records;
  - (ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or
  - (iii) Other substantiation approved by the Contracting Officer.
- (6) Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Contracting Officer or authorized representative.
- (7) Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.
- (8) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.
- (b) Materials. (1) or the purposes of this clause—
- (i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
  - (ii) Materials means—
    - (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;
    - (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
    - (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
    - (D) Applicable indirect costs.
- (2) If the Contractor furnishes its own materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—
- (i) Quantities being acquired; and
  - (ii) Actual cost of any modifications necessary because of contract requirements.
- (3) Except as provided for in paragraph (b)(2) of this clause, the Government will reimburse the Contractor for allowable cost of materials provided the Contractor—
- (i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
  - (ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contracting Officer will determine allowable costs of materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.
- (5) The Contractor may include allocable indirect costs and other direct costs to the extent they are—
- (i) Comprised only of costs that are clearly excluded from the hourly rate;
  - (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
  - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) To the extent able, the Contractor shall—
- (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
  - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.
- (7) Except as provided for in 31.205-26(e) and (f), the Government will not pay profit or fee to the prime Contractor on materials.
- (c) If the Contractor enters into any subcontract that requires consent under the clause at 52.244-2, Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.
- (d) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate

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payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) Ceiling price. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the "completion voucher" and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(g) Assignment and Release of Claims. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
- (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(h) Interim payments on contracts for other than services.

(1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the \_\_\_\_\_ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(i) Interim payments on contracts for services. For interim payments made prior to the final payment under this contract, the Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(End of clause)

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

<http://acquisition.gov/far/current/html/FARTOCP52.html>

<http://farsite.hill.af.mil>

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SECTION J -- LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

J.1 LIST OF ATTACHMENTS

1. Fee Schedule.
2. Confidentiality Agreement.



**MEMORANDUM**

September 15, 2008

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TO: Jay Gordon, Esq., US DOT Maritime Administration  
FROM: Dr. Kenneth W. Fisher  
RE: Fee Schedule For NDRF Contamination Minimization Project Analysis

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Fees payable by US governmental agency clients for work performed in calendar years 2008 and 2009 are shown below. All rates may be increased by five percent (5%) in each twelve month period commencing January 1, 2010.

Category I: Consulting, Analysis, Communications

Program Director Dr. Kenneth W. Fisher ..... \$285.00/Hr  
Principal Consultant Albert H. Bowers III..... \$265.00/Hr  
Principal Consultant Captain Richard DiNapoli..... \$265.00/Hr  
Senior Engineers/Analysts (at least 10 years after degree) ..... \$215.00/Hr  
Mid-Level Engineers/Analysts (at least 5 years after degree)..... \$175.00/Hr  
Junior Engineers/Analysts (less than 5 years after degree)..... \$135.00/Hr

Category II: Pure Travel Time

Two-Thirds of fees shown in Category I

Category III: Testifying at Depositions, Hearings and Trials

Hourly surcharge additional to Category I..... \$60.00

Category IV: Reimbursable Expenses

Client will pay reasonable and necessary direct costs incurred by Consultant in association with the required professional effort, including but not limited to communications, travel, printing/ copying and other costs as appropriate.

Administrative surcharge on airfares, all hotel charges,  
car rentals and professional sub-contracts ..... + Nine Percent (+9.0%)

## Confidentiality Agreement

In consideration of employment by the Maritime Administration (MARAD) as a litigative consultant, the consultant hereby agrees to the following:

1. The provisions of this agreement shall apply to and be binding upon the consultant, the consultant's company, business, employees, agents, officers, successors and assigns, and any person acting on behalf of the consultant in relation to consultant services in connection with this case or matter. The term consultant as used in this agreement includes the consultant, the consultant's company, business, employees, agents, officers, successors and assigns, and any person acting on behalf of the consultant.

2. Except as required by law, as otherwise provided in this agreement, or as directed by MARAD or the Department of Justice, no information obtained, developed, gathered or created as a result of consultant services and work performed in connection with this matter shall be provided or disclosed orally, in writing, or in any other form, including electronic data, to any third party or person who is not a party to this agreement. In any case in which disclosure of such information is or may be appropriate, no disclosures shall be made without prior written approval of MARAD or the Department of Justice. This prohibition includes, but is not limited to, communications with any person representing the media, any industry representatives, and any colleagues or fellow researchers. Disclosure may be made to persons who have signed and filed Confidentiality Agreements with MARAD or the Department of Justice in connection with this matter.

3. Except as required by law, as otherwise provided in this agreement, or as directed by MARAD or the Department of Justice, all documents, information, electronic data, or other work obtained, developed, gathered or created as a result of consultant services and work performed in connection with this matter, including documents or other information provided by the United States or other party, shall be treated as privileged and confidential information. The consultant shall not reveal such materials to any third party or person without prior written approval from MARAD or the Department of Justice, except for those persons who have signed and filed Confidentiality Agreements with MARAD or the Department of Justice in connection with this matter.

4. Should any documents, information, or electronic data provided, obtained, developed, gathered or created in connection with this matter be lost, discovered missing, or mistakenly or inadvertently turned over without MARAD or DOJ consent to an unauthorized person or third party, the consultant shall immediately report the details of such incident to MARAD or the Department of Justice. In the event the consultant receives any requests for such information, the consultant shall immediately notify MARAD or the Department of Justice and await and follow MARAD or DOJ instructions on how to proceed.

[LEFT BLANK]

5. Within 90 days after the expiration of the contract with MARAD for litigative consultant services, all documents and other information provided, obtained, developed, gathered or created in connection with this matter shall be delivered, upon request, to MARAD. Upon request, all electronic data and information will be provided or returned to MARAD and deleted from the consultant's computer systems.

6. From this date forward and throughout the periods of potential and actual litigation, the consultant shall not testify as a witness or participate as a consultant in any federal, state or administrative proceeding regarding this case or the issues relevant to this case on behalf of any other person or third party. Furthermore, the consultant shall not enter into any agreement for the performance of work or the provision of services with any person or party who is either a litigant or a potential litigant in this matter without prior notification and written approval from MARAD or the Department of Justice. As may be appropriate during the period of the contract for consultant services or after expiration of the contract, the consultant shall make disclosures of any potential or actual conflicts of interest.

7. In the event that additional personnel, contractors, or sub-contractors are necessary to assist the consultant in the performance of the contract for consultant services, the consultant shall notify MARAD promptly and seek approval to hire or use the services of such personnel. The consultant shall require each person to sign a Confidentiality Agreement identical to this one, and provide copies to MARAD.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

Case Name: Arc Ecology, et al. v United States Maritime Administration, et al., E.D. Cal. 2:07-cv-02320 (filed 10/29/2007)

\_\_\_\_\_  
Company Name

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