

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	Page 1 of 15
2. AMENDMENT/MODIFICATION NO. 0009	3. EFFECTIVE DATE 12/12/2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)		
6. ISSUED BY DOT/Maritime Administration, MAR-380 400 Seventh Street, SW., Room 7310 Washington, DC 20590		CODE 00091	7. ADMINISTERED BY (If other than Item 6) DOT/Maritime Administration, SAR Acquisition Office of Acquisition, MRG-7200,7737 Hampton Boulevard, Building 4D, Room 211 Norfolk, VA 23505		CODE 00092
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)  Ocean Duchess, Inc 16211 Park Ten Place  Houston, TX 77084-5113				9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
				(X)	10A. MODIFICATION OF CONTRACT/ORDER NO. DTMA8C05020
				(X)	10B. DATED (SEE ITEM 13) 07/25/2005
CODE *		FACILITY CODE			

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

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)**

No Funding Information

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

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

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

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

The Maritime Administration has instituted a Green Procurement Program for Acquisition and Procurement. Key points of this initiative include acquisition of low sulfur marine fuel, alternative fuels, alternative-fueled vehicles, bio-based products, energy star and energy efficient products, environmentally preferable products, non-ozone depleting substances for air conditioning, recovered material, renewable energy, and water efficient products.

Ship Managers have a key role in implementing this initiative by integrating appropriate Green Procurement Clauses into the SM's commercial purchasing procedures. Related FAR Clauses are hereby incorporated into the contract.

The SM shall comply with the prescriptions for appropriate use of these clauses found in the Federal Acquisition Regulations (FAR). Some clauses are applicable only on contracts or subcontracts greater than \$100,000. Others are applicable on purchases of materials where either EPA or USDA designated items are being purchased. The Ship Manager is expected to use good professional judgment in flowing down clauses in circumstances where they apply.

A revision to the Award Term Incentive Option Plan, Attachment J-12, is incorporated herewith.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Milton G. Spears	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. United States of America BY  (Signature of Contracting Officer)	16C. DATE SIGNED 12/12/2008

<b>Line Item Summary</b>	<b>Document Number</b> DTMA8C05020/0009	<b>Title</b> HQ Admin Mod Dec 08 Green Pro	<b>Page</b> 2 of 15
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<b>Line Item Number</b>	<b>Description</b>	<b>Delivery Date (Start date to End date)</b>	<b>Quantity</b>	<b>Unit of Issue</b>	<b>Unit Price</b>	<b>Total Cost</b>
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No Changed Line Item Fields

**Previous Total:**  
**Modification Total:**  
**Grand Total:**

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## SECTION A -- SOLICITATION/CONTRACT FORM

### A.1 SUMMARY OF CHANGES

Clause '52.211-05 - Material Requirements' has been added.

Clause '52.223-02 - Affirmative Procurement of Biobased Products Under Service and Construction Contracts' has been added.

Clause '52.223-03 Alt I - Hazardous Material Identification and Material Safety Data (Jan 1997) - Alternate I' has been added.

Clause '52.223-05 - Pollution Prevention and Right-to-Know Information' has been added.

Clause '52.223-09 - Estimate of Percentage of Recovered Material Content for EPA Designated Items.' has been added.

Clause '52.223-10 - Waste Reduction Program.' has been added.

Clause '52.223-11 - Ozone-Depleting Substances' has been added.

Clause '52.223-12 - Refrigeration Equipment and Air Conditioners' has been added.

Clause '52.223-15 - Energy Efficiency in Energy-Consuming Products' has been added.

Clause '52.223-16 - IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products' has been added.

Clause '52.223-17 - Affirmative Procurement of EPA-designated Items in Service and Construction Contracts' has been added.

The free form item 'J-2 has been edited.

Clause '52.223-01 - Biobased Product Certification' has been added.

Clause '52.223-04 - Recovered Material Certification' has been added.

Clause '52.223-13 - Certification of Toxic Chemical Release Reporting' has been added.

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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>

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.223-02	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	December 2007
52.223-11	Ozone-Depleting Substances	May 2001
52.223-05	Pollution Prevention and Right-to-Know Information	August 2003
52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts	May 2008
52.223-10	Waste Reduction Program.	August 2000
52.223-03 Alt I	Hazardous Material Identification and Material Safety Data (Jan 1997) - Alternate I	July 1995
52.223-12	Refrigeration Equipment and Air Conditioners	May 1995
52.223-15	Energy Efficiency in Energy-Consuming Products	December 2007
52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products	December 2007
52.211-05	Material Requirements	August 2000
52.223-09	Estimate of Percentage of Recovered Material Content for EPA Designated Items.	May 2008

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

### J.1 J-2

#### ATTACHMENT J-2

#### SHIP MANAGER (SM) SUBCONTRACT PURCHASING POLICIES

The purpose of this instruction is to establish policies and procedures for

- 1.0 review and approval of the commercial purchasing system (CPS);
- 2.0 consent to subcontract and review/advance notification of subcontracts; and
- 3.0 MARAD specific subcontract requirements,

in conjunction with Federal Acquisition Regulation (FAR) Part 44, Subcontracting Policies and Procedures.

#### 1.0 COMMERCIAL PURCHASING SYSTEM (CPS)

##### 1.1 SM DELIVERABLE

The SM is required to provide its CPS procedures to the Procuring Contracting Officer (PCO) within 90 days of NTP. However, the SM is encouraged to provide the deliverable early to enable the review process to be completed in a timely manner.

1.1.1 The CPS will be reviewed in accordance with FAR 44.303. In addition, special attention shall be given to:

1.1.1.1 "Best value" practices. In a "best value" practice, all aspects of ship's requirements and subcontractor's capabilities must be considered. In so doing, such enhanced performance factors as increased readiness, shortened repair period or prompt response may outweigh low price alone. The SM procedures shall be well defined and consistently applied and shall follow purchasing practices appropriate for the requirement and the dollar value of the purchase.

1.1.1.2 Methodology for the acquisition of quality products and services at fair and reasonable prices.

1.1.1.3 Minimization of acquisition lead-time and administrative costs of purchasing.

1.1.1.4 Use of self-assessment to support continuous improvements in purchasing.

1.1.1.5 Ability to segregate and track costs (Section 3.2).

1.1.1.6 Maintenance of complete subcontract documentation (Section 3.4).

1.1.1.7 Use of electronic commerce to the maximum extent practicable, for transmission, processing, invoicing and storing data associated with the SM contract.

1.1.1.8 Procedures to identify capable and reliable contractors who have successful past performance records and who can demonstrate a current ability to perform.

1.1.1.9 Procedures for inclusion of appropriate, current flow-down clauses, terms and conditions (Section 3.7).

SMs with CPSs previously approved by other Government agencies shall submit a copy of the documentation of the approval to the PCO in addition to a copy of its procedures for review.

##### 1.2 MARAD REVIEW OF CPS

Review of the CPS may take upwards of 90 days. To ensure consistency in the CPS review and approval process, MARAD has retained the services of the Defense Contract Audit Agency (DCAA) to perform a review of the CPS deliverable. DCAA's review will consist of a combined audit of procurement and accounting procedures and may include an on-site audit at the SM's facility.

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If deficiencies are found, the PCO will advise the SM of the deficiencies and recommend the necessary steps the SM must take to gain approval. In accordance with FAR 44.305-2, the SM shall be expected to reply within 15 days with a position regarding the recommendations.

Upon receipt of a favorable review, the PCO will issue notification of approval. Until such time as SM's CPS has been approved by MARAD under the current SM contract, subcontracts are subject to the approvals outlined in Section 2.2.1.2. MARAD CPS approval issued under a prior contract does not apply to the current SM contract.

### 1.3 MAINTENANCE OF CPS

The SM shall advise the PCO and Administrative Contracting Officer (ACO) of any change to its commercial procedures 14 calendar days prior to implementation throughout the performance period of the SMC.

The ACO will monitor the SM purchasing program in accordance with FAR 44.304. ACO review(s) may require on-site attendance at the SM's facility. The SM shall assist the ACO by providing space, administrative support, and access to records/reference documents during these inspections.

In accordance with FAR 44.302, once initial approval has been given, at least every 3 years, the ACO will determine whether a purchasing system review is necessary. The ACO will provide CPS re-certifications. MARAD will conduct annual cost incurred financial audits on SM records utilizing the services of DCAA. If warranted, interim cost-incurred audits will be ordered.

### 1.4 WITHDRAWAL OF CPS APPROVAL

During the performance period of the SMC, the ACO may lower the advance notification/consent thresholds, if there has been deterioration of the SM CPS or to protect the Government's interests. The ACO will issue a deficiency report to the SM, with a copy to the COCO and PCO. The SM shall immediately conform to the ACO's lower thresholds, and respond to the deficiency report within 15 days. Upon review of the response, the ACO may determine that the lower thresholds should continue or make a decision to withdraw approval of the CPS if it is determined that the SMC is deviating substantially from the approved CPS.

## 2.0 SUBCONTRACT REVIEWS

The SM shall provide subcontracts and documentation for review as follows:

### 2.1 ADVANCE NOTIFICATION

#### 2.1.1 Notification to ACO prior to award, with copy of intended subcontract

Dollar Level	Type of Contract
Any	Other than Fixed Price

#### 2.1.2 The PCO waives the requirement for advance notification of fixed price contracts.

### 2.2 CONSENT

#### 2.2.1 Request for consent to subcontract to ACO

##### 2.2.1.1 With Approved CPS

Dollar Level	Type of Contract
>\$125K	Other than Fixed Price
>\$1M	Fixed Price (sole source)
>\$2.5	Fixed Price (competitive)

##### 2.2.1.2 Without Approved CPS

Dollar Level	Type of Contract
>\$25K	Other than Fixed Price (except T&M)
>\$50K	Time-and-Materials

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> \$100K      Fixed Price

### 2.3 CONSENT TO SUBCONTRACT GUIDELINES

The request for consent to subcontract and supporting documentation shall be submitted to the ACO electronically at least 10 working days prior to intended subcontract award date. The ACO review will include the considerations listed in FAR 44.202-2 as well as consent limitations in 44.203. The SM request shall include all applicable informational elements listed in FAR 52.244-2, Subcontracts, subparagraph (f)(1). Additionally, the consent request shall include:

- o A clear analysis of the award decision, including all factors considered
- o Copy of proposals received and an abstract of proposals
- o Copy of proposed subcontract, including any changes to terms and conditions
- o Summary of negotiations, including explanation of variance between proposed and negotiated prices
- o Separately priced bonds and insurance, if coverage exceed 3.7.4 requirements
- o Specific funding required for the basic subcontract, supplemental growth, options, and projected SM administrative costs
- o Milestone schedule

### 2.4 ADDITIONAL REVIEW REQUIREMENTS

2.4.1 COTR/ACOTR specification reviews are always required regardless of the level of subcontract review.

2.4.2 For any subcontract requiring formal consent, the associated solicitation shall be submitted to the ACO for pre-issuance review electronically at least 10 working days prior to intended issuance date. The solicitation package submitted shall include:

- o Solicitation
- o Documentation of specification review and approval by the COTR/ACOTR
- o Source List
- o Detailed estimate
- o Basis for determination of liquidated damages, diversion/inter-port differentials, bonding, and insurance, if coverage exceeds 3.7.4 requirements

Thereafter, a copy of all changes or amendments to the solicitation will be provided to the ACO and COTR/ACOTR concurrent with issuance.

2.4.3 Notwithstanding the established review thresholds, the ACO or PCO may request a pre-award review of any complete subcontract, or part thereof (e.g., sole source, non-commercial items).

### 2.5 SPECIAL PROCEDURES FOR MISSION ESSENTIAL AND EMERGENCY REPAIRS

The SM shall only purchase supplies or services authorized by a Task Order (TO) or TO modification except for mission essential and emergency repairs described below:

#### 2.5.1 Mission Essential and Emergency Repairs: Foreign and domestic

Mission essential repairs are defined as repairs necessary to support a No-Notice Activation, or repairs necessary to prevent or correct unanticipated change in a ship's readiness status to C-3 or C-4.

An emergency is any action that is needed to protect or prevent the loss of life, limb, or property.

#### 2.5.2 Mission Essential Repair: General Policy

The SM shall notify the ACO and COTR/ACOTR as soon as possible, and at a minimum:

- o Define the intended work in as much detail as possible.
- o Develop an estimate of cost, and an initial not to exceed value.
- o Make all attempts possible to obtain competition, given the circumstances.
- o Obtain fixed price rates for subcontracted labor (to include straight time and overtime) fully burdened material, mutually acceptable terms and conditions.

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- o Recommend project start and completion dates.
- o Obtain verbal authorization for no-notice activation from personnel designated in Section G.6. Obtain verbal authorization for other mission essential and emergency repairs from the ACO as soon as practical. The ACO will issue a written TO confirming verbal authorizations as soon as possible.

### 2.5.3 Mission Essential Repairs Inside the United States

2.5.3.1 The SM shall comply with the policies of Section 2.5.2 and all appropriate aspects of its approved CPS.

2.5.3.2 All appropriate flow-down clauses shall be used, inclusive of Service Contract Act FAR-52.222-41.

### 2.5.4 Mission Essential Repairs Outside the United States

MARAD has been granted authority to waive the flow-down clauses required by FAR Part 44 for all non-commercial subcontract repairs accomplished in foreign ports. There are no mandatory flow-down clauses for foreign commercial item repairs. The SM shall comply with the policies of Section 2.5.2 and all appropriate aspects of its approved CPS as closely as possible, given the circumstances.

### 2.5.5 Planned Repairs Outside the United States

Aside from the waived flow-down clauses of FAR Part 44 noted above, the SM shall conduct planned foreign repairs (e.g. pre-positioned vessels) in accordance with all other aspects of Section 2.5.2 and its approved CPS.

### 2.5.6 Emergency

The SM is authorized to take whatever action is deemed necessary to protect or prevent the loss of life, limb, or property.

## 3.0 MARAD SPECIFIC SUBCONTRACT REQUIREMENTS

### 3.1 SUBCONTRACT FUNDING

MARAD may obligate funding for subcontracts on the initial TO, or may elect to obligate funding at a later date via TO modification. The SM is expected to timely execute the approved business plan by soliciting services or supplies "subject to the availability of funds;" however, the SM shall not sign a contract with a subcontractor and shall not incur a legal obligation without a funded TO. A separate TO will be issued for each subcontract >\$200K, and no other costs will be chargeable to this TO. For subcontracts <\$200K, the SM may use funds from multiple TOs. However, the SM must be able to track funding back to those TO's, and the aggregate amount of subcontracts issued must not exceed the funding on the TOs.

### 3.2 SEGREGATION AND MONITORING OF FUNDS

The SM is responsible for performing the ordered work, by the required delivery date, and within the authorized funding levels for each CLIN of the TO. The SM shall segregate and monitor costs accordingly.

The SM must notify the ACO in writing when 75% of the funds provided on the TO have been expended. SM are cautioned that this notification requirement applies to individual TOs even when multiple TOs are used on a project. Further, the SM shall notify the COTR/ACOTR and ACO at any point that it is determined that the ordered work cannot be accomplished within the required delivery and/or within the authorized funding.

The SM shall provide a tracking report in Excel spreadsheet format upon request. The spreadsheet shall include the following data elements, at a minimum:

- o Vessel Name
- o SM Contract number
- o TO number
- o CLIN number
- o DSN number
- o DSN funded amount
- o DSN actual cost

- o Short description of services/supplies
- o Dollar Amount invoiced
- o Subcontractor name
- o Subcontractor invoice number
- o Subcontract number

### 3.3 SUBCONTRACT SOCIOECONOMIC STATISTICAL REPORTING

All SM regardless of business size, shall report to each ACO by the 5th of each month, the total number and total dollar value of subcontracts awarded by the SM for that MARAD region as follows:

Type of Firm (U.S.)	Total # of subcontracts	Total Dollars
SDB Awards	_____	_____
Women Owned SB	_____	_____
SBA 8(a) SB Awards	_____	_____
HUBZone SB Awards	_____	_____
Veteran Owned SB Awards	_____	_____
Service Disabled Veteran Owned SB	_____	_____
Total Small Business Awards	_____	_____
Other U.S. Large Business Awards	_____	_____
Total U.S. Subcontract Awards	_____	_____
Total Foreign Subcontract Awards	_____	_____
Total Subcontract Awards	_____	_____

NOTE: Awards to small businesses must be counted in all appropriate categories. For example, an award to a Woman-owned, HUBZone certified firm would be included in both Woman-owned and HUBZone firm figures, but included only one time in Total Small Business Awards. In other words, the Total Small Business Awards will not necessarily equal the sum of all small business awards for the several types of small business firms.

SM certified as a large business shall monitor small and minority business awards in relation to the SM's subcontracting plan goals, accumulate data on all subcontract awards, including those less than \$50,000 and submit a SF-294 (Exhibit I), Subcontracting Report for Individual Contracts and SF-295 (Exhibit II), Summary Subcontract Report to the ACO as required by FAR.

### 3.4 SUBCONTRACT DOCUMENTATION

For purposes of Government auditing, the SM shall establish and maintain an individual file for each subcontract, which may be in electronic format. The file shall be identified with a sequential number for tracking. The file shall be adequately documented to establish the propriety of the transaction and the price paid, and that the SM complied with its commercial purchasing procedures. The subcontract file shall contain the following, as a minimum:

- o Copy of TO(s), with adequate funding authorized for this purpose
- o Subcontract, including clearly defined requirements (see Section 3.7)
- o Copy of all modifications to the subcontract
- o Documentation of competition obtained for purchases >\$2,500 or its absence properly justified
- o Documentation of purchase decision, evidencing that the price paid was fair and reasonable and the subcontractor selected represented the best value to the government
- o Documentation of negotiations (if conducted), including explanation of variance between proposed and negotiated subcontract prices
- o Proper approvals, including SM internal approvals in accordance with commercial procedures and MARAD specification, solicitation, and award approvals
- o Documentation of inspection and acceptance
- o Documentation of payment in accordance with subcontract terms
- o Copy of ACO direction to use Government source of supply (i.e., GSA) or approval of unique terms and conditions (i.e., insurance, bonds, demurrage, progress payment)
- o Documentation of rationale for not using directed sources (i.e., fuel)
- o Closeout documentation, including final invoice payment marked as such.

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Documentation may be maintained in separate files/systems where logical (e.g., documentation of payment in electronic accounting system), provided that the individual subcontract file indicates where the documentation is located and it is available for Government review at the SMGR corporate facility.

### 3.5 SUBCONTRACTOR PAYMENTS

The SM shall encourage vendors to submit invoices promptly. Ideally, the SM should encourage the use of electronic invoicing from the subcontractor to achieve accurate, timely invoices for review and payment. Prompt submission of invoices can be a consideration for best value as it permits obligated funds to be liquidated and excess funds deobligated.

The SM is responsible to verify the validity and accuracy of all subcontractor invoices prior to forwarding them to MARAD for reimbursement. Repeated invoice inconsistencies and errors are a reflection of poor quality control processes and will impact the SM's performance assessment. MARAD will reclaim overpayments directly from SM. The SM shall submit invoices after receipt of supplies/services in accordance with Section G.14.

In the rare situation where commercial practice is for buyer financing of goods or services in excess of the SM stipulated minimum working capital requirements (Section G.10), the SM may request advance payment on a case-by-case basis. For purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. The amount of advance payment requested shall not exceed the amount to be actually paid in advance based on the best terms the SM is able to negotiate with the agent or service provider. SM shall submit their request for advance payment (i.e., payment in advance of receipt of supplies/services) to the ACO via e-mail with a copy to the COTR/ACOTR and FCO, in the following format. The e-mail should be marked as URGENT.

"Request advance payment in the amount of \$ \_\_\_\_\_ (insert amount) under Contract \_\_\_\_\_ (insert SM Contract #) / Task Order \_\_\_\_\_ (insert TO #, if applicable), for \_\_\_\_\_ (insert description of services/supplies). Documents to support the amount requested are attached (i.e., detailed estimate, pro forma invoice from the subcontractor). The scheduled pay date is \_\_\_\_\_ (insert date)."

The SM is to include a clear statement or rationale stating why advance payment is necessary and that the value exceeds their contract stipulated minimum working capital.

The ACO will evaluate and approve/disapprove the request via e-mail. If approved, the TO will also indicate that advance payment is authorized. The SM shall submit an invoice, indicating the date when payment is required in the certification statement block on the EIS invoice form and indicating in the description field on the supporting spreadsheet that this is an advance payment. MARAD will endeavor to meet the specified payment date, however, be advised that commercial advance payments are not subject to the interest penalty provisions of the Prompt Payment Act in accordance with FAR 32.9.

### 3.6 SUBCONTRACTOR CLAIMS AND DISPUTES

Subcontracts are between the SM and the subcontractor, and the SM is responsible for resolving subcontract disputes. The SM shall advise the ACO and COTR/ACOTR of disputes, changes in status of disputes, and potential costs or delays in delivery or possible litigation. MARAD will not directly participate in disputes and/or settlement.

MARAD endorses and recommends the use of alternative disputes resolution (ADR) procedures. The SM is responsible for all administrative and legal costs associated with resolving such disputes, except when the government has authorized reimbursement by issuance of a TO. When private counsel has been authorized, the government will reimburse reasonable costs associated with such representation subject to the funding limitations of TO.

Payments of judgments or settlements resulting from this disputes resolution process are the responsibility of the SM, although the SM may request reimbursement provided that indemnification under Section G.7.4.1 does not apply. SM are cautioned to seek prior approval from the ACO of settlements, which the SM intends to submit for reimbursement, in order that a reserve of appropriated funds can be made for the claim. The liability of the United States under this clause is subject to the availability of appropriated funds.

If a dispute is not settled between the SM and the subcontractor and the matter advances to a formal claim in the Courts, Section G.7 Claims and Litigation will apply.

### 3.7 GENERAL SUBCONTRACT POLICIES

3.7.1 Subcontract Basic Content - SM subcontracts shall contain the following information, at a minimum:

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- o Identification number
- o Date of Subcontract Award
- o Description of supply/service
- o Delivery/performance date
- o Place of delivery/performance
- o Packing or shipping instructions, if any
- o Address to submit invoices
- o Terms and Conditions

3.7.2 Flow Down Clauses - The SM shall incorporate appropriate flow-down clauses in subcontracts inclusive of the Service Contract Act (SCA). U.S. Department of Labor Wage Determinations can be found at <http://www.wdol.gov/sca.aspx#0>. The Wage Determinations can be found under the following numbers:

Texas, Houston 2005-2515  
Texas, Beaumont 2005-2505  
Texas, Orange 2005-2505  
Texas, Channelview (Harris County) 2005-2515  
Texas, Port Arthur (Jefferson County) 2005-2505  
Texas, Corpus Christi (Nueces County) 2005-2507  
Virginia, Norfolk and Newport News 2005-2543  
Massachusetts, Buzzards Bay (Barnstable County) 2005-2259  
Massachusetts, Boston (Suffolk County) 2005-2255  
Maine, Castine 2005-2247  
Maryland, Baltimore 2005-2247  
South Carolina, Charleston 2005-2473  
Florida, Jacksonville 2005-2115  
New York, New York 2005-2375  
Florida, Tampa (Hillsborough County) 2005-2125  
Alabama, Mobile 2005-2009  
California, Alameda, Contra County 2005-2051  
Washington, Pierce County 2005-2567

The Ship Manager is authorized to utilize the clause set forth in H.22, Physical Loss or Damage to the Vessel or Other Government Property during Dry Docking or Shipyard Availability (Oct 2007), to limit the shipyard's liability during the dry docking of RRF vessels. Under H.22, the Maritime Administration assumes the risk of physical loss or damage to any part of the vessel, its machinery, equipment, stores, and other property, including cargo, if owned by the Government, which occurs during a dry docking or shipyard availability, except to the extent the Ship Manager's Subcontractor (the shipyard) is liable under the following clause. The Ship Manager shall report all loss or damage to the vessel or other government property including, but not limited to, loss or damage for which the Subcontractor is liable under H.22. If such loss or damage exceeds the limit of liability set forth in H.22, the Ship Manager shall promptly notify the ACO, both verbally and in writing, of the loss or damage and await direction from ACO. By authorizing the Ship Manager to include H.22 in a subcontract with a shipyard the Maritime Administration agrees to release the Ship Manager from, and not to seek indemnification from the Ship Manager for, the risks assumed by the Maritime Administration under H.22, except when the indemnification provision of Clause G.7.4 of the Ship Manager Contract applies.

Flow-down clauses vary with the type of item, price, and place of purchase. The SM is responsible to select and apply the correct clauses to avoid unnecessary cost to the Government.

3.7.2.1 Commercial Items - In accordance with FAR 44.402, all commercial item purchases shall include the flow-down clauses listed in FAR 52.244-6, Subcontracts for Commercial Items, and SCA, except for subcontracts obtained outside the United States. Supplies/services ordered by MARAD are considered commercial items unless otherwise stated on the TO.

3.7.2.2 Non Commercial Items - Purchases for supplies and services that do not qualify as commercial items (as determined by the MARAD ACO) shall include all appropriate clauses that flow-down from the SM Contract, including SCA.

3.7.3 Subcontract terms - The subcontract shall not include any language implying or stating that it is an agent of the Federal Government, and the SM shall not sign as "agent" or "SM for MARAD." The subcontract shall not include terms that bind the Government to the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor.

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3.7.4 Insurance - The SM shall require insurance from subcontractors to protect Government property in an amount appropriate to the subcontract, which shall be determined on a case-by-case basis. Typically, when a vessel is transported to a shipyard facility for a repair availability, MARAD requires the following types of insurance and minimum coverage during the entire performance of the subcontract:

- (a) Workmen's Compensation, including Longshoremen & Harbor Worker's Act coverage - no minimum.
- (b) Employers Liability - \$5 million bodily injury by accident, each accident - \$5 million bodily injury by disease each accident - \$5 million bodily injury by disease in the aggregate.
- (c) Maritime Employers Liability (Jones Act) - \$5 million for each person per occurrence and \$5 million in the aggregate.
- (d) Comprehensive General Liability - \$5 million combined single per occurrence limit for bodily injury and property damage and \$5 million in the aggregate.
- (e) Ship Repairers Legal Liability - \$5 million per vessel, per occurrence.
- (f) Pollution Liability - \$5 Million per occurrence.

The SM shall ensure that indemnification extends to MARAD, and the insurance certificate shall name the United States of America as a secondary source certificate holder as owner, along with the SM as vessel operator. Such policies shall contain a statement that there is no recourse against the USA for payment of premium. The SM shall stipulate that upon request the subcontractor shall provide a copy of all original insurance policies within 5 calendar days. The SM shall ensure that the coverage does not contain exclusions that would effectively negate coverage for all but third party liabilities. All such insurance will contain 30 calendar days advance notice of cancellation or of any non-renewal which is the option of the insurer be provided in writing to the U.S. Department of Transportation, Division of Marine Insurance , MAR-780, W23-453, 1200 New Jersey Ave., SE, Washington, DC 20590.

The SM shall obtain and review proof of insurance coverage (i.e., certificate of insurance, policy). The ACO may request that the SM send the subcontractor insurance to the MARAD Division of Marine Insurance for review.

3.7.5 Supplemental Material/Lower Tier Subcontract Markup - The SM shall not include a percentage markup (i.e., material handling charge, burden rate) in its subcontracts for supplemental material or lower tier subcontracts. This type of arrangement is considered a Cost-Plus-A-Percentage-Of-Cost type contract, which is prohibited by FAR.

### 3.7.6 Subcontractor Screening

3.7.6.1 The SM shall verify that no apparent conflict of interest/improper affiliations exist between the SM and subcontractors.

3.7.6.2 The SM shall verify that proposed subcontractors are not suspended and/or debarred by consulting the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-procurement Programs, website at <http://epls.arnet.gov>. If the SM intends to subcontract with a party that is debarred, suspended, or proposed for debarment, notification to the ACO is required in accordance with FAR 9.405-2.

3.7.6.3 SM shall evaluate subcontractor performance to establish qualified sources, and to be used as part of the evaluation of best value. The SM is expected to factor subcontractor past performance into its decision on award. The SM must support decisions not to award based on past performance.

**3.7.6.4 When procuring services for major overhauls, upgrades or regulatory dry dockings where the services of a full-service shipyard are involved and the subcontract will be awarded using the SM's best value procedures, SM's shall request and evaluate information from offerors regarding their environmental stewardship. This may be done by establishing a source selection factor to specifically evaluate the shipyards environmental efforts. The SM shall identify their weighting of this factor in the subcontract solicitation and document its evaluation in its subcontract consent request where consent to subcontract is required.**

**There are countless practices any given shipyard may be using to be a more responsible Environmental Steward that go beyond compliance and provide a "greener more sustainable" ship repair facility. Practices may include but are not limited to the following: corporate, regional or local environmental policy; greenhouse gas reduction strategies; improved water quality**

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efforts; water conservation policies and programs; solid waste reduction strategies including reuse and recycling efforts; improved air quality objectives and goals; environmental management system commitment either through ISO 14001, ISO 14001 Certification, the National Performance Track Program, State, local or other approved methodologies; green procurement practices; vendor and supply chain environmental control policies and programs; employee environmental recognition programs; hazardous material minimization programs; voluntary compliance reporting programs; community response and awareness strategies; pollution prevention programs; renewable energy efforts; bio-based products; alternative fuel vehicles and alternative fuels; habitat restoration/wetland mitigation programs; litter prevention programs/policies; sustainable building/energy efficient building policies.

Offerors may be evaluated based on the level of detail or the degree of innovation of one or more programs, policies, strategies, or practices that they have implemented. No one specific "green" practice is preferred over another and all efforts will be evaluated in the context of the environmental compliance history of the facility.

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SECTION K -- REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 52.252-01 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

This solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision 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>
52.223-04	Recovered Material Certification	May 2008
52.223-01	Biobased Product Certification	December 2007
52.223-13	Certification of Toxic Chemical Release Reporting	August 2003

AWARD TERM INCENTIVE  
OPTION PLAN (ATIOP)  
For  
Ready Reserve Force (RRF)  
Ship Manager Contracts  
Awarded Under  
Solicitation DTMA8R04004

Approved by

Term Determining Official  
Procuring Contracting Officer

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## PART 1 INTRODUCTION

### A. Overview

This plan covers the administration for the award term and additional vessel incentive option provisions of contracts to be awarded under Solicitation DTMA8R04004 for ship manager services in support of the Maritime Administration's (MARAD) Ready Reserve Force (RRF) Program.

### B. Contract Matters

The following matters, among others, are covered in the contract(s):

1. The contractor (Ship Manager) is required to provide services to maintain assigned RRF vessels in Fully Mission Capable Readiness Status and efficiently activate and operate these vessels in support of national emergencies and defense objectives. The scope of services to be provided is detailed in Section C of the Contract.
2. There are fifty-four (54) vessels included in this acquisition. Most of the groups consist of two or three ships of the same class. Multi-year contracts will be awarded for fifty-one (51) of the vessels. With the exception of two ship groups, the resulting contracts will have one four-year base performance period, with two 3-year options. The base term of the contracts shall not exceed 48 months from its effective date, with annual cancellation ceilings through contract year 10, in accordance with the provisions of FAR Clause 52.217-2, CANCELLATION UNDER MULTI-YEAR CONTRACTS. The total term of the resulting contracts shall not exceed ten (10) years, including all option years.
3. One single-vessel group (#6) is scheduled to be awarded for one year with two 1-year options.
4. One two-ship group (#11) will be awarded as a multi-year contract with a two-year base performance period and eight 1-year options, with a cancellation ceiling for contract year 2, in accordance with the provisions of FAR Clause 52.217-2, CANCELLATION UNDER A MULTI-YEAR CONTRACTS. The total term of the contract for Ship Group 11 shall not exceed 10 years, including all option years if exercised.
5. Ship groups (SG) 6 and 11 will not be considered for incentive awards due to the uncertainty of the program requirement and associated funding.
6. The estimated cost for the base period of performance is described in Section B of the contract. The services to be performed under this contract will be incrementally funded for each performance period.
7. Performance periods beyond contract year 1 will be subject to availability of funds.
8. The fixed price per diem rates for the option years (i.e., award terms) and additional vessels are subject to escalation in accordance with the Economic Price Adjustment (EPA) Clause, FAR 52.222-43, inclusive of Consumer Price Index (CPI) and future wage determinations.
9. The award term for the base years and option years, if exercised, are (except for SG 6 and SG 11):
  - a. Base year = 48 months (4 years) from effective date of contract **(07/27/2005 through 07/26/2009)**.
  - b. 1<sup>st</sup> Award Term Incentive Option = 36 months (3 years) – **(07/27/2009 through 07/26/2012)**
  - c. 2<sup>nd</sup> Award Term Incentive Option = 36 months (3 years) – **(07/27/2012 through 09/26/2015)**

10. The option for additional terms and/or additional vessels is determined by the Government's evaluation of the contractors' performance in terms of the criteria stated in this Award Term Incentive Option Plan (ATIOP), consistent with other factors such as, results from Contract Administrative Reviews (CAR), information contained in the Ship Manager Performance Evaluation and Appraisal System (SM-PEAS), etc., **and other documented and pertinent contractor performance information.** In determining whether to award an incentive option for additional vessels, the Government will consider the contractor's experience by class of ship and the availability of ships. This determination and the methodology for determining the additional terms, and additional vessels, if applicable, are unilateral decisions made solely at the discretion of the Government.
11. The Term Determining Official (TDO) may unilaterally change the particulars of this Plan, as covered in Part VI, below, providing the contractor receives notice of the change at least fifteen (15) calendar days prior to the beginning of the evaluation period to which the changes apply.

C. Award Term Incentive Option

1. The determination to award an additional term incentive option is contingent upon the contractor maintaining excellent levels of ongoing performance in all areas of the contract, as well as exhibiting continuous improvements in performance, and reductions of costs, whether specified as award term evaluation areas or not, for each evaluation period throughout the term of the contract. This is designed to reinforce the importance of overall superior contract performance.
2. The exercise of additional award term incentive options to the contractor is unilaterally determined by the Government's evaluation of the contractor's performance. See Part IV.

D. Additional Vessels Incentive Option

1. The determination to award additional vessel options is contingent upon the contractor maintaining excellent levels of ongoing performance in all areas of the contract, and exhibiting continuous improvements in performance and reduction of costs, whether specified as award term evaluation areas or not, for each evaluation period throughout the term of the contract. This is designed to reinforce the importance of overall superior contract performance.
2. The award of additional vessel option to the contractor is unilaterally determined by the Government's evaluation of the contractor's performance. See Part IV.

## **PART II EVALUATION SCHEDULE AND SCORING**

### **A. Schedule of Evaluation Periods for Base Years and Award Term Incentive Option Years**

The Government will complete an initial performance evaluation at the completion of the ninth month of the base year. This evaluation period will be scored but not counted in the Award Term Decision Point (ATDP), but will be used as a “wake-up” period for the contractor, at which time the Government will identify areas of performance impacting the contractor’s ability to obtain an award term and additional vessels option. The Government will complete a performance evaluation every six (6) months thereafter, following the initial 9-month evaluation, which will be scored and considered in the award term incentive determination.

### **B. Evaluation Scoring**

1. In each PAP period, full performance including activation and operation is worth 600 points. Without Goal 2, activation, operation, deactivation scores are worth a cumulative amount of 450 points. These points are converted by SM-PEAS into a numerical score. The SM-PEAS system accounts for this variance automatically and adjusts the overall percentage. SM shall earn an average of 80 per PAP for the base term/first award incentive and 85 per PAP for the second award incentive.
2. Beyond the point evaluation, the TDO will consider other relevant contractor performance data. If a contractor falls within 10% of the minimum score, the TDO may grant the award term incentive option if other performance data supports such a consideration, and if the award is within the best interests of the program and the Government.
3. To determine whether to grant a second or subsequent award term incentive option, the Government will consider the contractor's performance in the four (4) most recent evaluations. Beyond the point evaluation, the TDO will consider other relevant contractor performance data. If a contractor falls within 10% of the minimum score, the TDO may grant the award term incentive option if other performance data supports such a consideration, and if the award is within the best interests of the program and the Government.
4. If the TDO determines to grant an award term incentive option, the Contracting Officer shall execute a modification to add the award term incentive option period to the contract performance period.
5. If the TDO determines to grant additional vessels via the incentive option, the Contracting Officer shall execute a modification to exercise the incentive option by adding the ship group to the contract.
6. If the contractor decides to not accept the award term incentive option period and/or the additional vessels option, the contractor must notify the Contracting Officer in writing no later than 240 days prior to the start of the applicable award term period. The contractor, however, remains fully responsible for continued satisfactory performance for the remaining performance period of the contract in spite of such a decision.

C. ATDP Timetable

The schedule below reflects the timetable for evaluations of award term incentive option decision points. The Award Term Decision Point (ATDP) precedes the Contracting Officer’s determination, under FAR Part 17.207, to exercise the option.

Schedule of Evaluation Periods and Award Term Incentive Option Periods									
Core Performance Periods				Award Term Incentive Option Periods					
Contract Base Year 1	Contract Base Year 2	Contract Base Year 3	Contract Base Year 4	1 <sup>st</sup> Award Term Contract Year 5	1 <sup>st</sup> Award Term Contract Year 6	1 <sup>st</sup> Award Term-Contract Year 7	2 <sup>nd</sup> Award Term Contract Year 8	2 <sup>nd</sup> Award Term Contract Year 9	2 <sup>nd</sup> Award Term Contract Year 10
Jan 2006 Evaluate for initial period (9 months of 1 <sup>st</sup> CY) ("Wake-up Period")	July 2006 1 <sup>st</sup> six-month evaluation	July 2007 3 <sup>rd</sup> six-month evaluation	July 2008 5 <sup>th</sup> six-month evaluation	July 2009 6 <sup>th</sup> six-month evaluation	July 2010 8 <sup>th</sup> six-month evaluation	July 2011 10 <sup>th</sup> six-month evaluation	July 2012 12 <sup>th</sup> six-month evaluation	July 2013 13 <sup>th</sup> six-month evaluation	July 2014 15 <sup>th</sup> six-month evaluation
	Jan 2007 2 <sup>nd</sup> six-month evaluation	Jan 2008 4 <sup>th</sup> six-month evaluation (1 <sup>st</sup> ATDP)	Jan 2009 6 <sup>th</sup> six-month evaluation	Jan 2010 7 <sup>th</sup> six-month evaluation	Jan 2011 9 <sup>th</sup> six-month evaluation (2 <sup>nd</sup> ATDP)	Jan 2012 11 <sup>th</sup> six-month evaluation	Jan 2013 12 <sup>th</sup> six-month evaluation	Jan 2014 14 <sup>th</sup> six-month evaluation	

### **PART III ORGANIZATIONAL STRUCTURE FOR AWARD TERM ADMINISTRATION**

The following organizational structure is established for administering the award term and additional vessel option provisions of the contract(s). Note that this structure is subject to change at the discretion of the Government.

#### **A. Award Term Determination Official (TDO)**

1. The TDO is the Director, Office of Ship Operations
2. Primary TDO responsibilities are:
  - a. Approves the Award Term Plan and any changes thereto;
  - b. Reviews recommendations made by the Award Term Review Board (ATRB) and considers all information from pertinent sources;
  - c. Determines the earned award term points for each evaluation period;
  - d. Appoints the ATRB Chairperson;
  - e. Approves award term and additional vessel options earned for each evaluation period as addressed in Part III below.

#### **B. Award Term Review Board (ATRB)**

1. The Chairperson of the ATRB is the Deputy Director, Office of Ship Operations, or some other person appointed by the TDO. The following are voting members of the ATRB:
  - a. Deputy Director, Chairperson
  - b. Chief, Division of Maintenance & Repair, Deputy Chairperson
  - c. Procuring Contracting Officer
  - d. Recorder provided by MAR-380
  - e. Other Member – if deemed necessary by the Chairman - TBD
  - f. *Quality Assurance Evaluator(s) – TBD (delegated Contracting Officer's Technical Representatives and Administrative Contracting Officers)*
2. The Chairperson may recommend the appointment of other non-voting members to assist the ATRB in performing its functions. Possible non-voting members are:
  - a. *SOMO - TBD*
  - b. *FCO – TBD*
  - c. *Logistics Manager – TBD*
  - d. *Chief Counsel – TBD*
3. The primary responsibilities of the ATRB are:
  - a. Review Program Monitors' evaluations of the contractor's performance;
  - b. Conduct periodic evaluations of contractor performance by reviewing all performance elements prior to ATRB meetings, noting questionable areas and computing a tentative score for each category;
  - c. Consider all information from pertinent data, discusses events with fellow members at the meeting(s), and requiring clarifications from Program Monitors, if necessary;
  - d. Calculate and vote on earned award term points on the basis of what is presented and substantiated;
  - e. Prepare and submit ATRB Report to the TDO covering the ATRBs finding and recommendations for each evaluation period; and

f. Recommend changes to the ATIOP, if necessary.

C. Performance Monitors (PMs)

1. A monitor will be assigned to each or several performance areas to be evaluated. A list of performance monitors with their assigned areas of evaluation is shown in Exhibit 1 to the ATIOP.
2. Each monitor will be responsible for complying with the General Instructions for Performance Monitors (Exhibit 2) and any specific instructions of the ATRB Chairperson.
3. The primary responsibilities of the PMs are:
  - a. Monitor, evaluate, and assess contractor performance, and maintain written records of contractors performance in assigned area(s);
  - b. Ensure that fair and accurate evaluation is obtained;
  - c. Prepare interim (mid-point) evaluation reports as directed by ATRB;
  - d. Recommend appropriate changes in this Plan for consideration, as addressed in Part VI below.

#### **PART IV METHOD FOR DETERMINING AWARD TERM INCENTIVE OPTION AND ADDITIONAL VESSELS OPTION**

A determination of the award term incentive option and, if applicable, additional vessel option earned for each evaluation period will be made promptly by the TDO after the end of the period. The method to be followed in monitoring, evaluating, and assessing contractor performance during the period, as well as for determining the award term and additional vessel options, is described below.

A. The ATRB Chairperson will assign a performance monitor(s) for each or several performance areas and/or sub-areas to be evaluated under the contract. PMs will be selected on the basis of their expertise relative to prescribed performance area emphasis. The PM role may be in addition to, or an extension of, regular responsibilities. The ATRB Chairperson may change monitor assignments at any time without advanced notice to the contractor. The ATRB Chairperson will notify the contractor promptly of all monitor assignments.

B. The ATRB Chairperson will ensure that each PM receives the following:

- a. A copy of the contract and all modifications;
- b. A copy of this Plan, along with any changes made in accordance with Part V, below;
- c. Appropriate orientation and guidance; and
- d. Specific instructions applicable to a monitor's assigned performance area(s), if applicable.

C. PMs will monitor, evaluate and assess, and maintain written record of contractor performance and will discuss the results with contractor personnel or management, as appropriate, in accordance with the General Instructions for Performance Monitors detailed in Exhibit 2 of this Plan, as well as with specific instructions and guidance furnished by the ATRB Chairperson.

D. PMs will submit written quarterly performance monitor reports and, if required, make verbal presentations to the ATRB.

E. As requested, the ATRB Chairperson will request and obtain performance information from other MARAD units or personnel normally involved in observing contractor performance or are recipients of contractor services.

F. Periodically, the ATRB will consider PM Reports and other performance information it obtains and will discuss the reports and information with PMs or other personnel, as appropriate.

G. Promptly, at the end of each evaluation period, the ATRB will consider all the performance information it has obtained, and will summarize its preliminary findings and recommendations for coverage in the ATRB Report.

H. **Should the TDO request it, the** ATRB Chairperson will prepare the ATRB Report for the period and submit it to the TDO for use in determining the award term and additional vessels, if applicable, earned.

I. **The TDO will consider the ATRB Report and discuss it with the ATRB Chairperson or other personnel, as appropriate. If the TDO considers it appropriate, the TDO will meet with the contractor for discussions. If requested by the TDO, the ATRB Chairperson and any other personnel involved in performance evaluations may be required to attend the meeting with the contractor. If the TDO determines that no meetings are appropriate or required, the TDO may make his/her determination unilaterally.**

J. The TDO will determine the incentive options earned during the evaluation period. The award term incentive option, as well as additional vessels option, will not result solely from mathematical summing, averaging, or the application of a formula. The TDO's determination of the award term incentive option, and/or additional vessel option, and basis for this determination will be stated in the Award Term Incentive Determination submitted to the Contracting Officer. The submittal will be signed by the TDO and his findings delivered to the Contracting Officer.

K. The determination to exercise an incentive option shall be made in accordance with FAR Part 17.207. The Contracting Officer will notify the contractor of the decision no more than ninety (90) days nor less than sixty (60) days prior to exercise of the option.

## **PART V AWARD TERM INCENTIVE OPTION/ADDITIONAL VESSEL(S) OPTION EVALUATION CRITERIA**

A. The evaluation criteria against which contractor performance will be evaluated are:

1. Quality of Service
2. Cost Control
3. Timeliness of Performance
4. Contractor Business Relations

B. Six (6) critical performance elements will be evaluated with respect to the above four (4) evaluation criteria. These six (6) critical areas for evaluation, and their associated weights, which reflect the performance priorities of the Government, are presented in Exhibit 4. Note that for any performance period, performance elements and their associated evaluation criteria and weights may be changed to reflect the type of work being performance or changes in program emphasis.

1. Responsive and High-Quality of Fleet Maintenance Requirements
2. Successfully Perform and Support Core RRF Requirements (Activation/Operation/Deactivation)
3. Adhere to Sound Safety, Security and Environmental Standards and Practices with No Adverse Impact on Personnel, Environment and Property
4. Adequately Crew Vessels with Qualified Marine Personnel
5. Compliance with Government and Company Business Policies, Procedures and Practices
6. Effective Management and Control of Costs

C. The performance elements and sub-elements will be evaluated based on the following general criteria. Specific evaluation criteria for each sub-area included in the QASP, Technical Exhibit 2 of the contract.

1. Responsive and High-Quality of Fleet Maintenance Requirements
  - 1-1 Preventive Maintenance Plan (PMP) Execution
  - 1-2 Regulatory Body Classification/Certification
  - 1-3 Readiness of the Vessel
  - 1-4 Quality and Completeness of Business Plan (M&R Work Plan)
  - 1-5 Quality of Ship Manager's Execution of Business Plan (M&R Work Plan)
  - 1-6 Logistics
2. Successfully Perform and Support Core RRF Requirements (Activation/Operation/Deactivation/Logistics)
  - 2-1 Quality of Vessel Activation and Deactivation
  - 2-2 Quality of Ship Operations
3. Adhere to Sound Safety, Security and Environmental Standards and Practices with No Adverse Impact on Personnel, Environment, and Property
  - 3-1 Environmental
  - 3-2 Security
  - 3-3 Safety
4. Adequately Crew Vessels with Qualified Marine Personnel
  - 4-1 Contract Manning Levels and Quality
5. Compliance with Government and Company Business Policies, Procedures and Practices

- 5-1 Quality Assurance
- 5-2 Acquisition Procedures
- 5-3 Acquisition Operations
- 5-4 Deliverables

6. Effective Management and Control of Costs

- 6-1 Effectively manages and controls costs by implementing business processes and practices that accurately estimate, track, reconcile and close-out actions; as well as provide reduced costs to the Government while continuously improving performance throughout contract performance period.

D. The numerical ranges and adjective definitions in Exhibit 5 will be used in the award term/additional vessel(s) determinations.

Each of the performance elements and sub-elements described in Exhibit 4 will receive a score assigned to the adjective definitions in Exhibit 5. The total weighted average score of performance elements will be converted into a percentage of available points to be gained for the evaluation period based upon the chart in Exhibit 5.

C. The contractor does not “earn” an award term incentive option or additional vessels option solely by meeting the criteria of the ATIOP. In determining whether to award an incentive option for additional vessels, the Government will consider the contractor’s experience by class, as well as the availability of vessels. However, under the terms and conditions of the contract, if the contractor fails to meet the criteria of the ATIOP, the Contracting Officer may not consider the exercise of an option.

## **PART VI CHANGES IN PLAN COVERAGE**

### Right to Make Unilateral Changes

Any matters covered in this Plan not otherwise requiring mutual agreement under the contract will be changed by the Contracting Officer via a unilateral modification attaching the revised ATIOP. The change(s) will be made no later than fifteen (15) calendar days before the start of the applicable evaluation period.

### Method for Changing Plan Coverage

1. Personnel involved in the administration of the award term incentive option and additional vessels option provisions of the contract are encouraged to recommend changes in plan coverage with a view toward changing management emphasis, motivating higher performance levels, or improving the award term determination process. Recommended changes should be sent to the ATRB Chairperson for consideration and drafting.
2. Prior to the end of each evaluation period, the ATRB will submit changes to the next evaluation period for approval by the TDO with appropriate comments and justifications, or inform the TDO that no changes are recommended for the next period.
3. The TDO will notify the Contracting Officer at least fifteen (15) days before the beginning of the evaluation period what changes, if any, are to be applied and the Contracting Officer will make the changes via a revised ATIOP as stated in Paragraph VI.A. above. If the contractor is not provided with this modification at least fifteen (15) calendar days before the beginning of the next evaluation period, the existing plan coverage will continue in effect for the next evaluation period.
4. No change to the ATIOP shall be effective until a modification is issued by the Contracting Officer.

## **PART VII APPENDICES OF EXHIBITS**

Exhibit 1 – Performance Monitors

Exhibit 2 – General Instructions for Performance Monitors

Exhibit 3 – Actions/Schedules for Award Term/Additional Vessels Options  
Determination

Exhibit 4 - **Reserved.**

Exhibit 5 - Rating Guidelines

Exhibit 6 - **Reserved.**

**USE OF EXHIBITS 1, 2, 3, or 5 IS AT THE DISCRETION OF THE AWARD TERM DETERMINING  
OFFICIAL WHO MAY SUBSTITUTE HIS/HER OWN INSTRUCTIONS, OR IMPLEMENT ALL OR PART  
OF THE EXHIBIT(S).**

**Exhibit 1**  
**Performance Monitors**

Performance Monitors

Major Functional Areas

Chairperson	Assigns PM for each or several performance areas and/or sub-areas to be evaluated. Ensures that each PM receives a copy of the contract and all modifications; a copy of this ATIOP, along with any changes, and provides appropriate orientation and guidance, and specific instructions to assigned performance area(s), if applicable.
Marine Surveyors	Maintains written records of the contractor's performance in their assigned evaluation area(s) so that a fair and accurate evaluation is obtained. Prepares interim and end of year evaluation reports as directed by the ATRB Chairperson. Performance monitors may also include the Contracting Officer's Technical Representative and Quality Control Personnel.
Administrative Contracting Officers (ACOs)	Ensures compliance with contract requirements, specifically all regulatory and reporting requirements, company commercial purchasing procedures, management of subcontracts, and implementation of approved subcontracting plans. Conducts annual CARs, prepares written report of findings in SM-PEAS, and maintain written records of contractor's performance in assigned evaluation area(s).
Term Determining Official (TDO)	Approves the ATIOP and any changes thereto. Reviews recommendations made by the ATRB and determine the earned award term points for each evaluation period. Approves award terms and additional vessels.

**Exhibit 2**  
**General Instructions for Performance Monitors**

1. Monitoring and Assessing Performance
  - a. Monitors will review the ATIOP, and may discuss it with appropriate contractor personnel, and encourage maximum understanding of the evaluation and assessment environment.
  - b. Monitors may schedule status meetings, as appropriate, to ensure tasks are on schedule or problems are identified as early in the evaluation period as possible.
  - c. Monitors will plan and accomplish both announced and unannounced assessment visits at the contractor's facility and/or vessel locations; however, before each announced visit, the monitor should contact appropriate contractor personnel who may accompany the monitor, if desired.
  - d. Monitors will discuss with contractor personnel, as appropriate, any observed deficiencies and/or recommendations. Adverse items or areas of poor performance will be addressed to afford the contractor an opportunity to clarify possible misunderstandings and to correct or resolve deficiencies.
  - e. Monitors must remember that contacts and visits with contractor personnel are to be accomplished within the context of official contractual relationships. Monitors shall avoid any activity or association which might cause, or give the appearance of causing, a conflict of interest.
  - f. Monitor discussions with contractor personnel are not to be used to instruct, to direct, to supervise, or as an attempt to control those personnel in the performance of this contract. The role of the monitor is to monitor, assess, and evaluate the contractor's performance; not to manage the contractor's effort.
2. Documenting Evaluations and Assessments

Evaluations and assessment conducted, results obtained, and discussions with contractor personnel will be documented in a quarterly report submitted by the Chairperson, ATRB, to the TDO.
3. Evaluation/Assessment Reports

Monitors will prepare a formal Performance Monitor Report in accordance with the following instructions for submission to the ATRB, or other, if applicable, not less than 14 days prior to the last day of the evaluation period.
4. Performance Monitor Reports

The Performance Monitor Report will be submitted by each monitor for that monitor's area of responsibility. The report will summarize and evaluate the contractor's performance for that monitor's area of responsibility and document specific reasons for the evaluation. Guidelines for evaluations are contained in Exhibit 4, below. Significant events should be documented and attached to the report, if applicable.
5. Verbal Reports

Monitors will be prepared to make verbal reports as required by the ATRB Chairman or the TDO.



**Exhibit 4**  
**Factors and Weights for Performance Evaluation**

In each PAP period, full performance including activation and operation is worth 600 points. Without Goal 2, activation, operation, deactivation scores are worth a cumulative amount of 450 points. The SM-PEAS systems accounts for this variance automatically and adjusts the overall percentage.

**Exhibit 5**

**Rating Guidelines**

Summarize contractor performance in each of the rating areas. Assign each area a rating of N/A (Not Applicable), 0 (Unsatisfactory), 1 (Poor), 2 (Fair), 3 (Good), (4) Excellent, and (5) Outstanding. Use the following instructions in making these evaluations. Ensure that this assessment is consistent with the Agency’s Quality Assurance Surveillance Plan (QASP).

<i>Rating</i>	<i>Quality of Product/Service</i>	<i>Cost Control</i>	<i>Timeliness of Performance</i>	<i>Business Administration</i>
	<ul style="list-style-type: none"> <li>Compliance with contract and requirements</li> <li>Technical quality/ accuracy of reports/ deliverables</li> <li>Ability to meet work assignment goals and objectives</li> <li>Appropriateness of professional mix to ensure quality of work while minimizing cost and time expenditures</li> <li>Adherence to regulations, procedures and guidelines</li> </ul>	<ul style="list-style-type: none"> <li>Ability to meet cost estimates stated in the work plan and TO’s</li> <li>Current, accurate and complete billings</li> <li>Record of forecasting and controlling target costs</li> <li>Cost reductions</li> </ul>	<ul style="list-style-type: none"> <li>Development &amp; maintenance of planned schedules and budgets for deliverables</li> <li>Responsive to technical direction</li> <li>Timely completion of task, including subcontract administration activities</li> <li>Met delivery schedules according to the schedule/deadlines given in contract, task order and/or work plan</li> </ul>	<ul style="list-style-type: none"> <li>Response to Agency requests</li> <li>Ability to manage subcontractors</li> <li>Ability to manage subcontractors to sub</li> <li>Notification of subcontractors</li> <li>Maintain communication link w</li> <li>personnel</li> <li>inform</li> <li>personnel</li> <li>personnel</li> <li>progre</li> </ul>
0 – Unsatisfactory	Nonconformances are jeopardizing the achievement of contract requirements despite major Agency involvement	Inability to manage cost issues is jeopardizing performance of contract requirements despite major Agency involvement	Delays are jeopardizing performance of contract requirements despite major Agency involvement	Response to Agency requests administrative
1 – Poor	Overall compliance requires major Agency involvement to ensure achievement of contract requirements.	Ability to manage cost issues requires major Agency involvement to ensure achievement of contract requirements	Delays require major Agency involvement to ensure achievement of contract requirements	Response to Agency requests technical/somewhat marginally
2 – Fair	Overall compliance requires minor Agency involvement to ensure achievement of contract requirements.	Ability to manage cost issues requires minor Agency involvement to ensure achievement of contract requirements	Delays require minor Agency involvement to ensure achievement of contract requirements	Response to Agency requests technical/somewhat
3 – Good	Overall compliance requires no Agency involvement to ensure achievement of contract requirements	Management of cost issues requires no Agency involvement to ensure achievement of contract requirements	Delays require no Agency involvement to ensure achievement of contract requirements	Response to Agency requests administrative
4 – Excellent	There are no quality problems	There are no unresolved cost management issues	There are no unexcused delays	Response to Agency requests administrative
5- Outstanding	The Contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding a point to the rating will be used in those rare circumstances when contractor performance clearly exceeds the performance level described as Excellent			

**Exhibit 6**  
**RESERVED.**

NOTE: A performance grade of unsatisfactory may be grounds for issuance of a cure notice and/or contract termination.