

ORDER FOR SUPPLIES OR SERVICES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER 01/03/2011		2. CONTRACT NO. (If any)		6. SHIP TO: a. NAME OF CONSIGNEE Richard Sonnenchein				
3. ORDER NO. DTMA-91-V-2011-0039		4. REQUISITION/REFERENCE NO. MA-PR700-20110001		b. STREET ADDRESS 1200 New Jersey Avenue, SE W21-207		c. CITY Washington	d. STATE DC	e. ZIP CODE 20590
5. ISSUING OFFICE (Address correspondence to) U.S. DOT/ MARITIME ADMINISTRATION OFFICE OF ACQUISITION MAR-380 1200 NEW JERSEY AVENUE SE MAIL STOP W-28-201 WASHINGTON DC 20590-0001				f. SHIP VIA				
7. TO: John Voisenat, alt Govt Bus. POC a. NAME OF CONTRACTOR HERBERT SOFTWARE SOLUTIONS INC b. COMPANY NAME				8. TYPE OF ORDER <input checked="" type="checkbox"/> a. PURCHASE REFERENCE YOUR: <input type="checkbox"/> b. DELIVERY				
c. STREET ADDRESS 2417 Mariner Square Loop, Suite 125				Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated. Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.				
d. CITY Alameda		e. STATE CA	f. ZIP CODE 94501-1032					
9. ACCOUNTING AND APPROPRIATION DATA See Schedule				10. REQUISITIONING OFFICE OFC. of ACQUISITION				
11. BUSINESS CLASSIFICATION (Check appropriate box(es)) <input checked="" type="checkbox"/> a. SMALL <input type="checkbox"/> b. OTHER THAN SMALL <input type="checkbox"/> c. DISADVANTAGED <input type="checkbox"/> g. SERVICE-DISABLED VETERAN-OWNED <input type="checkbox"/> d. WOMEN-OWNED <input type="checkbox"/> e. HUBZone <input type="checkbox"/> f. EMERGING SMALL BUSINESS						12. F.O.B. POINT Destination		
13. PLACE OF a. INSPECTION Destination		b. ACCEPTANCE Destination		14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) 12/31/2011	16. DISCOUNT TERMS	

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
Continued ...						

SEE BILLING INSTRUCTIONS ON REVERSE	18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOTAL (Cont. pages)	
	21. MAIL INVOICE TO:							
	a. NAME MARAD A/P INVOICES						\$9,000.00	17(i) GRAND TOTAL
	b. STREET ADDRESS (or P.O. Box) P.O. BOX 25710						\$9,000.00	
c. CITY OKLAHOMA CITY		d. STATE OK	e. ZIP CODE 73125					
22. UNITED STATES OF AMERICA BY (Signature)					23. NAME (Typed) Judy Bowers TITLE: CONTRACTING/ORDERING OFFICER			

**ORDER FOR SUPPLIES OR SERVICES
SCHEDULE - CONTINUATION**

PAGE NO
2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER 01/03/2011	CONTRACT NO.	ORDER NO. DTMA-91-V-2011-0039
-----------------------------	--------------	----------------------------------

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
0001	Admin Office: U.S. DOT/Maritime Administration Office of Acquisition MAR-380 1200 New Jersey Avenue, SE Mail Stop W-28-201 Washington DC 20590-0001 Accounting Info: 70X1750RA0.2011.81110ICCSV.00001750000.25305 .61006600 Period of Performance: 01/01/2010 to 12/31/2011 2010 software warranty and annual maintenance of HECSALV, etc. - Period of Performance 1/1/10 - 12/31/2010 - \$4,500.00 2011 software warranty and annual maintenance of HECSALV software, etc. - Period of Performance 1/1/11 - 12/31/11 -\$4,500.00 Period of Performance: 12/01/2010 to 12/31/2011 The total amount of award: \$9,000.00. The obligation for this award is shown in box 17(i).				9,000.00	

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))

\$9,000.00

Supplies or Services/Prices	4
Contract Clauses.....	4
52.216-24 Limitation of Government Liability. (APR 1984).....	7
52.216-25 Contract Definitization. (OCT 1997)	7
52.241-10 Termination Liability. (FEB 1995)	8

Supplies or Services/Prices**Contract Clauses**

52.204-7 Central Contractor Registration. (APR 2008)

52.222-41 Service Contract Act of 1965. (NOV 2007)

52.225-13 Restrictions on Certain Foreign Purchases. (JUN 2008)

52.227-14 Rights in Data--General. (DEC 2007)

52.227-18 Rights in Data - Existing Works. (DEC 2007)

52.227-19 Commercial Computer Software License. (DEC 2007)

52.232-8 Discounts for Prompt Payment. (FEB 2002)

52.232-25 Prompt payment. (OCT 2008)

52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration. (OCT 2003)

52.232-34 Payment by Electronic Funds Transfer - Other than Central Contractor Registration. (MAY 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either -

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: designated office) by [*the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or concurrent with first request as prescribed by the head of the agency; if not prescribed, insert no later than 15 days prior to submission of the first request for payment*]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms

acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and -

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with

the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The Contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
- (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

**52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.
(MAY 1999)**

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer - Other than Central Contractor Registration, the Government has designated the office cited in

paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name: []

Mailing Address: []

Telephone Number: []

Person to Contact: []

Electronic Address: []

(End of clause)

52.233-3 Protest after Award. (AUG 1996)

52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)

52.243-1 Changes - Fixed-Price. (AUG 1987)

52.244-6 Subcontracts for Commercial Items. (JUN 2010)

52.245-9 Use and Charges. (AUG 2010)

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form). (APR 1984)

52.249-8 Default (Fixed-Price Supply and Service). (APR 1984)

52.216-24 Limitation of Government Liability. (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding []dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is []dollars.

(End of clause)

52.216-25 Contract Definitization. (OCT 1997)

(a) A [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a [*insert specific type of proposal; e.g., fixed-price or cost-and-fee*] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*]:

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by -

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

52.241-10 Termination Liability. (FEB 1995)

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the net cost of the new facility shall be recovered by the Contractor is [*Insert negotiated duration.*] months.

(c) *Net facility cost.* The cost of the new facility, less the agreed upon salvage value of such facility, is \$[*Insert appropriate dollar amount.*]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government shall pay the Contractor whether or not service is received is \$[*Divide the net facility cost in paragraph (c) of this clause by the facility's cost recovery period in paragraph (b) of this clause and insert the resultant figure.*]

(e) *Termination charges.* Termination charges = \$[*Multiply the remaining months of the facility's cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause and insert the resultant figure.*]

(f) If the Contractor has recovered its capital costs at the time of termination there will be no termination liability charge.

(End of clause)