

**SOLICITATION / CONTRACT / ORDER FOR COMMERCIAL ITEMS**  
**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NUMBER  
 PRSBRF10010  
 PAGE 1 OF 24

2. CONTRACT NO. DTMA4D10001  
 3. AWARD/EFFECTIVE DATE 03/05/2010  
 4. ORDER NUMBER  
 5. SOLICITATION NUMBER  
 6. SOLICITATION ISSUE DATE

**7. FOR SOLICITATION INFORMATION CALL:**  
 a. NAME  
 b. TELEPHONE NUMBER (No collect calls)  
 8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY  
 DOT/Maritime Administration, DPO Acquisition  
 201 Mission Street, Suite 1800  
 San Francisco, CA 94105-1905  
 TEL: (415) 744-2924 ext.  
 FAX: (415) 744-2576 ext.  
 CODE 00094  
 10. THIS ACQUISITION IS  
 UNRESTRICTED OR  SET ASIDE: 100.00% FOR:  
 SMALL BUSINESS  EMERGING SMALL BUSINESS  
 HUBZONE SMALL BUSINESS  8(A)  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  
 NAICS:  
 SIZE STANDARD: 10,000,001-17,000,001

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  
 SEE SCHEDULE  
 12. DISCOUNT TERMS  
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  
 13b. RATING  
 14. METHOD OF SOLICITATION  
 RFQ  IFB  RFP

15. DELIVER TO  
 DOT/Maritime Administration, DPO - Suisun Bay Reserve Fleet  
 2595 Lake Herman Road (FOG)  
 Benicia, CA 94510  
 Attn: Esther Harris  
 CODE 47094  
 16. ADMINISTERED BY  
 U.S. Merchant Marine Academy (Procurement)  
 MMA-5206, Division of Procurement  
 Kings Point, NY 11024-1699  
 CODE 00095

17a. CONTRACTOR/OFFEROR  
 ENV AMERICA, INCORPORATED  
 244 California Street, Suite 500  
 San Francisco, CA 94111-4317  
 TELEPHONE NO. (877) 429-4334 ext.  
 CODE m FACILITY CODE  
 18a. PAYMENT WILL BE MADE BY  
 DOT/Maritime Administration, DPO Finance  
 201 Mission Street, Suite 1800  
 San Francisco, CA 94105  
 CODE 44094

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN  
 OFFER  
 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  
 SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
(Use Reverse and/or Attach Additional Sheets as Necessary)					

25. ACCOUNTING AND APPROPRIATION DATA  
 2010 - - 70X - 1768000 - 1 - SD - - SDDP0EP - - - 00004100 - 00 - - 25404 - - 6100 - 6600  
 26. TOTAL AWARD AMOUNT (For Govt. Use Only)  
 \$ 185,800.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED  
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN \_\_\_\_\_ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.  
 29. AWARD OF CONTRACT: REF. \_\_\_\_\_ offer \_\_\_\_\_ OFFER  
 DATED 02/25/2010. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR  
 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)  
 Kathryn M. Rato  
 30b. NAME AND TITLE OF SIGNER (Type or print)  
 Kathryn Rato  
 30c. DATE SIGNED  
 31b. NAME OF CONTRACTING OFFICER (Type or print)  
 Kathryn Rato  
 31c. DATE SIGNED  
 3/5/10

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED     INSPECTED     ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY <i>(Print)</i>
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT <i>(Location)</i>
	42c. DATE REC'D <i>(YY/MM/DD)</i>
	42d. TOTAL CONTAINERS

<b>Line Item Summary</b>	<b>Document Number</b> DTMA4D10001	<b>Title</b> Paint chips disposal	<b>Page</b> 3 of 24
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**Total Funding:** \$185,800.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
2010	70X	1768000	1	SD		SDDP0EP			00004100	00	
<b>Division</b>	<b>Closed FYs</b>		<b>Cancelled Fund</b>								
25404	6100		6600								

Line Item Number	Description	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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PRSRBF10010  
Paint Chip Disposal  
DUNS: 787838754  
TIN:330507880

0001	Transport and Disposal of Lead-based Paint Chips		1.00	NTE	\$185,800.000	\$ 185,800.00
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(01/26/2010 to 01/24/2011)

The contractor shall provide for Transport and Disposal of Lead-based Paint Chips Provide services for profiling, manifesting, transportation and disposal of hazardous waste (lead-based paint chips), generated at Maritime Administration, Suisun Bay Reserve Fleet (SBRF).

The lead-based paint chips are accumulated on-site by SBRF, primarily in 55-gallon drums and tri-wall containers.

Est'd Qty	FF	UT	Price	Pkg	Material	
1000			\$132/dr	55-gal	drums	Lead-based Paint Chips
200			\$269/TR	One cu/yard	tri-wall w/pallet	Lead-based Paint Chips

SBRF will provide the following:

- " Laboratory analysis or generator knowledge as required
- " Forklift and driver for loading upon the contractor's conveyance

the Scope of Work also includes the following:

- " Profiling of lead-based paint as required.
- " Preparation of hazardous waste manifests for SBRF's review and signature.
- " Any accompanying documentation required, such as Landfill Disposal Restriction forms, etc.
- " A completed hazardous waste label for each drum or tri-wall and other marking as required by environmental rules.
- " Check disposal drums for proper packaging, condition and labeling.
- " Copies of certifications for haulers and transportation, storage and disposal facilities (TSDFs).
- " Haul hazardous waste to the disposal site.
- " Forward any documentation received as a result of the disposal actions to the COTR.
- " Disposal of the waste.
- " Contractor shall pick-up, as requested by the Task Order (a call requesting pickup from John Colberg, within 5 days of the request

Billing is submitted for payment after each task order

As applicable depending on the waste, contractor is to follow the following hierarchy for disposal:

1. Recycling
2. Treatment
3. Incineration
4. Landfill

Ref Req No: PRSRBF10010

<b>Line Item Summary</b>	<b>Document Number</b> DTMA4D10001	<b>Title</b> Paint chips disposal	<b>Page</b> 4 of 24
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**Total Funding:** \$185,800.00

<b>FYs</b>	<b>Fund</b>	<b>Budget Org</b>	<b>Sub</b>	<b>Object Class</b>	<b>Sub</b>	<b>Program</b>	<b>Cost Org</b>	<b>Sub</b>	<b>Proj/Job No.</b>	<b>Sub</b>	<b>Reporting Category</b>
<b>Division</b>	<b>Closed FYs</b>	<b>Cancelled Fund</b>									

<b>Line Item Number</b>	<b>Description</b>	<b>(Start Date to End Date)</b>	<b>Quantity</b>	<b>Unit of Issue</b>	<b>Unit Price</b>	<b>Total Cost</b> (Includes Discounts)
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**Total Cost:** \$185,800.00

*Ctr/MARAD Finance/POC/J.Colberg/E. Harris*

**Contract Level  
Funding Summary**

**Document Number**  
DTMA4D10001

**Title**  
Paint chips disposal

**Page**  
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2010 - - 70X - 1768000 - 1 - SD - - SDDP0EP - - - 00004100 - 00 - - 25404 - - 6100 - 6600  
\$185,800.00

Reference Requisition: PRSBRF10010

**Total Funding: \$185,800.00**

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C.1 THE RFQ NUMBER DTMA4Q10010, TERMS& CONDITIONS

The Request for Quotation number is DTMA4Q10010 and incorporates provisions and clauses in effect through Federal Acquisition Circular 2005-38. This acquisition is a Small Business set aside for offerors' business size not to exceed \$12.5Mil. The NAICS is 562211. The contract type will be a firm-fixed-priced unit-price Indefinite Delivery Indefinite Quantities (IDIQ) contract. Though at time of award the IDIQ contract will be funded to the successful offeror's total of extended amounts, and this sum shall be considered a Not-To-Exceed ceiling for Task Orders to be issued against during the period of performance. This is a combined synopsis/solicitation for commercial items prepared in accordance with the format found in FAR 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation for proposals. A written solicitation will not be issued. The ensuing award is under the authority of FAR Subpart 12 "Acquisitions of Commercial Items". The Government proposes to solicit offers for the following services and quantities:

DESCRIPTION OF SERVICE: Provide services for profiling, manifesting, transportation and disposal of hazardous waste (lead-based paint chips), generated at the Maritime Administration, Suisun Bay Reserve Fleet (SBRF), Benicia, California. The lead-based paint chips are accumulated on-site by SBRF, primarily in 55-gallon drums and tri-wall cardboard cubic yard containers.

The Government will provide the following:

- Laboratory analysis.
- Forklift and driver for loading upon the contractor's conveyance.

The Contractor shall provide:

- Profiling of lead-based paint according to the analytical provided by the Government.
- Hazardous waste manifests for SBRF's review and signature.
- Any accompanying documentation required, such as Landfill Disposal Restriction forms, etc.
- A completed hazardous waste label for each drum or tri-wall and other marking as required by environmental rules.
- The Government has packed and labeled the drums. The contractor shall assure disposal drums are properly packaged, labeled and in good condition for shipping and disposal. The contractor shall report to the government if containers are found not acceptable so that the government may repack or re-label.
- Haul hazardous waste to the disposal site.
- Disposal of the waste.
- Forward any documentation received as a result of the disposal actions to the COTR.
- Contractor shall pick-up, as requested by the Task Order, the quantity of drums within five (5) days of the Ordering Officer's COTR's request (via email ), See Task Order paragraph below.

PRICE SCHEDULE

CLIN 0001: Est'd QTY:1000 UT:55-gal drums already packed with Lead-based Paint Chips \$\_\_\_\_\_ per drum, extended to be \$\_\_\_\_\_

CLIN 0002: Est'd QTY:200 UT: One cu/yard tri-wall w/pallet, packed with Lead-based Paint Chips \$\_\_\_\_\_ per triwall , extended to be \$\_\_\_\_\_

Total of CLIN 0001 & 0002 ext'd amouts \$\_\_\_\_\_

CLAUSES: The following FAR provisions apply to this acquisition: FAR 52.212-1 Instruction to Offers Commercial Items, FAR 52.212-2 Evaluation-Commercial Items, FAR 52.212-3 Offeror Representations and Certifications and Certifications Commercial Items, all offerors are to include with their offer a completed copy of the Representations and Certifications or go on-line and complete form at <https://orca.bpn.gov>. FAR 52.212-4, Contract Terms and Conditions Commercial Item. (p)

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Limitation of Liability, is revised to read: **LIABILITY** a. The Contractor shall be liable for and shall at all times defend, indemnify and hold harmless the Government, its officers, enlisted personnel, agents and employees from and against any all loss, damage or injury, including property damage, personal injury and death, which may be sustained by any person or persons, whether they be employees, agents, or representatives of the parties hereto, or third persons, as a result of the Contractors performance of this contract. The Contractor shall also be liable for and shall at all times defend, indemnify and hold harmless the Government, is officers, enlisted personnel, agents and employees from and against any and all public or private environmental claims or liabilities shall include but not be limited to civil and criminal penalties, natural resource damages, response costs, cleanup and remediation, damage to Government and third party property, and any other third party liability.

b. In the event any such claim or demand is made upon the Government, its officers, enlisted personnel, agents or employees, or in the event any suit therefore is instituted, the Government shall give immediate notice of such claim or suit to the Contractor and will refrain from any payment or demand with respect to such claim or suit without first allowing the Contractor a reasonable opportunity to resolve the claim. The Contractors liability under this clause shall include reimbursement to the Government, its officers, enlisted personnel, agents and employees for any judgments, payments or litigation expenses occasioned to them in connection with claims, demands or suits of which notice has been given by the Government.

c. The Contractor releases the Government, its officers, enlisted personnel, agents and employees from any liability for any loss, damage or injury, which may be sustained by the Contractor in the performance of this contract.

d. Notwithstanding any other provisions of this clause, the Contractor shall not be liable for or required to defend, indemnify, hold harmless or release the Government, its officers, enlisted personnel, agents and employees for any judgment, payments or expenses arising out of and to the extent of the gross negligence, willful misconduct or criminal acts of the Government, its officers, enlisted personnel, agents or employees.

**CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

a) Definitions. The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O. "Driving"-(1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary. "Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. (See definition in DOT Order 3902.10). (b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, contractors and subcontractors are encouraged to: (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-- (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. (2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as- (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving. (c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts that exceed the micro-purchase threshold, other than subcontracts for the acquisition of commercially available off-the-shelf items.

And as also prohibited by the California Code - Section 23123.5 CAL. VEH. CODE § 23123.5.

**IMPORTANT NOTICE: FAR 52-232-33 (Payment by Electronic Funds transfer Central Contractor Registration, May 1999) makes mandatory the requirement for contractors to be registered in the CCR Database. CONTRACTORS MAY REGISTER ONLINE AT HTTP://WWW.CCR.GOV/. IT IS MANDATORY TO OBTAIN A DUNS NUMBER PRIOR TO REGISTERING. CONTRACTORS SHALL CALL DUN& BRADSTREET (1-800-333-0505) TO OBTAIN. AWARD CANNOT BE MADE UNLESS REGISTERED**

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FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB1998)

FAR 52.216-18 ORDERING. (OCT 1995)

Such orders may be issued from: 1 March 2010 through 28 Feb 2011.

FAR 52.216-19 ORDER LIMITATIONS. (OCT 1995)

Minimum order. (a) less than \$700.00,

(b) Maximum order. The Contractor is not obligated to honor--

(1) in excess of 50 barrels

(2) in excess of 300 barrels

(3) 10 calendar days

(d) within 10 days

FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(d) 28 February 2011.

#### TASK ORDER (TO)

When a TO is required, the Contracting Officer Representative (COTR) will request a pick up and indicate the quantity, via email or phone call (this shall be arranged at time of performance with the successful offeror). The pickup shall be in the parking lot at MARAD Suisun Bay Reserve Fleet, 2595 Lake Herman Road, Benicia CA and the contractor shall pick up within five (5) days of the email request. The COTR's email request shall also copy the Contracting Officer. The Contractor shall respond to the request by email within 24 hours. All TOs are subject to the terms and conditions of this contract. This contract shall control in the event of conflict with any TOs.

#### TASK ORDER ADMINISTRATION

Correspondence for the Task Orders should be directed to the following address, John.Colberg@dot.gov and kathryn.rato@dot.gov.

The following clauses cited in FAR 52.212-5 are applicable to this acquisition; FAR 52.203-6 Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 2553g and 10 U.S.C. 2402); FAR 52.222-3 Convict Labor (E.O. 11755); FAR 52.222-21, Prohibition of Segregated Facilities; FAR 52.219-4 Notice of Evaluation preference for HUBZone Small Business Concerns if offer elects to waive indicate in Offer. (15USC 657a), FAR 52.222-26 Equal Opportunity (E.O. 11246); FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (38 U.S.C. 4212); FAR 52.222-36 Affirmative Action for Workers with Disabilities (29 U.S.C. 793); FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212); FAR 52.225-13 Restriction on Certain Foreign Purchases (Mar 2005), FAR 52.232-33, Payment by Electronic Funds Transfer Central Contractor Registration (31 U.S.C. 3332); FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (E.O. 13201); FAR 52.222-41 Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.); FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 AND 41 U.S.C. 351, et seq.) truck driver \$22.50/hr. The Department of Labor Wage Determination No. 2005-2069-Revision No. 8 apply, see attached. The full text of any clauses reference above are available from the Contracting Officer or may be accessed electronically at: <http://www.arnet.gov/far>.

#### COMMERCIAL CLAUSES

1 52.212-04 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS

MARCH  
2009

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(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

- (1) within a reasonable time after the defect was discovered or should have been discovered; and
- (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-01, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-01, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting for the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision,

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contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.-(1) Items accepted. Payment shall be made for items that have been picked up and once the relative documentation has been delivered to John n Colberg, [John.colberg@dot.gov](mailto:John.colberg@dot.gov) from Suisun Bay MARAD facility. .

(2) Prompt payment. 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.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest. (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

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(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986;

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41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-05.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) Central Contractor Registration (CCR). (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

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(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).  
\_\_\_Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).
- (2) 52.233-03, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (3) 52.233-04, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer shall check as appropriate.]

(1) 52.203-06, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

\_\_\_ (3) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

\_\_\_ (4) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (MAR 2009) (Pub. L. 111-5).

\_\_\_ (5) 52.219-03, Notice of Total HUBZone Small Business Set-Aside (Jan 1999) (15 U.S.C 657a).

\_\_\_ (6) 52.219-04, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C 657a).

\_\_\_ (7) [Reserved]

\_\_\_ (8)(i) 52.219-06, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-6.

\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-6.

\_\_\_ (9)(i) 52.219-07 Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.

\_\_\_ (10) 52.219-08, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637 (d)(2) and (3)).

\_\_\_ (11)(i) 52.219-09, Small Business Subcontracting Plan (APR 2008) (15 U.S.C. 637(d)(4)).

\_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.

\_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.

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- \_\_\_ (12) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- \_\_\_ (13) 52.219-16, Liquidated Damages—Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- \_\_\_ (14)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- \_\_\_ (ii) Alternate I (June 2003) of 52.219-23.
- \_\_\_ (15) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (16) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (17) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- \_\_\_ (18) 52.219-28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 632(a)(2)).
- X (19) 52.222-03, Convict Labor (June 2003) (E.O. 11755).
- \_\_\_ (20) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (AUG 2009) (E.O. 13126).
- \_\_\_ (21) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- XX (22) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- XX (23) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) (38 U.S.C. 4212).
- XXX (24) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- X (25) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) (38 U.S.C. 4212).
- \_\_\_ (26) 52.222-54, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- \_\_\_ (27)(i) 52.223-09, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).
- \_\_\_ (ii) Alternate I (MAY 2008) of 52.223-09 (42 U.S.C. 6962(i)(2)(C)).
- \_\_\_ (28) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).
- \_\_\_ (29)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).
- \_\_\_ (ii) Alternate I (DEC 2007) of 52.223-16.
- \_\_\_ (30) 52.225-01, Buy American Act—Supplies (Feb 2009) (41 U.S.C. 10a-10d).

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\_\_\_ (31)(i) 52.225-03, Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

\_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.

\_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.

\_\_\_ (32) 52.225-05, Trade Agreements (AUG 2009) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

XX (33) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O's, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (34) 52.226-04, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).

\_\_\_ (35) 52.226-05, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

\_\_\_ (36) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_ (37) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_ (38) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

\_\_\_ (39) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

\_\_\_ (40) 52.232-36, Payment by Third Party (FEB 2010) (31 U.S.C. 3332).

\_\_\_ (41) 52.239-01, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_ (42)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

X (1) 52.222-41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, et seq.).

\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (SEP 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

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\_\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

\_\_\_ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services— Requirements (FEB 2009) (41 U.S.C. 351, et seq.).

\_\_\_ (7) 52.226-06, Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

\_\_\_ (8) 52.237-11, Accepting and Dispensing of \$1 Coin (SEPT 2008) (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-08, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vii) [Reserved]

(viii) 52.222-41, Service Contract Act of 1965 (NOV 2007)(41 U.S.C. 351, et seq.).

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(ix) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

\_\_\_Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) (41 U.S.C. 351, et seq.).

(xii) 52.222-54, Employment Eligibility Verification (JAN 2009)

(xiii) 52.226-06, Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-06.

(xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

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SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

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## SECTION I -- CONTRACT CLAUSES

### I.1 SERVICE CONTRACT ACT

52.222-41 Service Contract Act of 1965.

As prescribed in 22.1006(a), insert the following clause:

Service Contract Act of 1965 (Nov 2007)

(a) Definitions. As used in this clause—

“Act” means the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

“Contractor,” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

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(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective

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bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

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(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of payments and termination of contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service

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employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's certification.

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

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- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
  - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Subj: Appointment as a Contracting Officer's Technical Representative  
DATE: March 4, 2010

From: Kathryn Rato

To: *John Colberg*

You are hereby appointed as the Contracting Officer's Technical Representative (COTR) under IDIQ Contract No. *DTMA4D10001* with the ENV Environmental for Hazardous Disposal. As the COTR, your primary duty is to monitor the contractor's performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the unit price. As COTR you have authority to issue task orders not to exceed \$25,000/ task. Maintain a spreadsheet of incurred calls/task orders issued, then when completed. In the performance of the duties delegated to you in this letter, you are cautioned that you could be held personally liable for actions taken or directions given by you to the contractor that are beyond the authorities given to you in this letter. The duties or authorities in this letter are not delegable; therefore, you must advise the Contracting Officer, *Kathryn Rato* immediately when you are unable to perform these duties.

Your duties and limitations, as applicable to the contract you will be monitoring, are as follows:

**MONITORING PERFORMANCE.**

Ensure that the contractor complies with all of the requirements of the statement of work, specifications, or performance work statement, and when requested by the contractor, provide technical direction to the contractor's technical manager. This technical assistance must be within the scope of the contract (e.g., interpreting specifications, statement of work, performance work statement, etc.). When a difference of opinion between you and the contractor occurs, notify the contracting officer or the contract administrator/specialist immediately for resolution.

Ensure that the personnel being used by the contractor are of the same caliber that was originally proposed by the contractor to the Government. The experienced personnel contracted for and/or approved by the Government should not be diluted by the use of personnel with less experience. However, you may not permit changes, substitutions, or additions to personnel. Any decrease in or lack of performance shall be brought to the attention of the contracting officer or contract administrator/specialist.

You will also be required to complete the attached "Evaluation of Contractor's Performance Sheet" within 30 days after the contractor has met all terms and conditions of the contract. Note: This form shall not be used for construction and architect-engineer contracts (see (FAR) 48 CFR 36.604).

**MONITORING COSTS.**

Review and evaluate the contractor's progress in relation to the expenditures. When the costs expended by the contractor are not commensurate with the contractor's progress, bring this to the attention of the contracting officer or contract administrator/specialist for immediate action.

Review the contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer either approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract administrator/specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the contractor.

**CHANGES TO THE CONTRACT.**

You cannot authorize the contractor to stop work, and you are not authorized to delete, change, waive, or negotiate any of the technical requirements or other terms and conditions of the contract. Should a change (monetary or otherwise) to the contract become necessary, it must be made by a contract modification issued by the contracting officer. When in doubt, contact the contracting officer or contract administrator/specialist.

Any contract change requested by the contractor must be put in writing by the contractor to the contracting officer for action; however, you should immediately advise the contracting officer or contract administrator/specialist of the proposed change since it may affect the contract price, cost, or delivery/performance schedule. When the proposed change is received by the contracting officer, you will be required to provide the contracting officer with a written analysis and rationale for the change and to evaluate any costs associated with the change.

You must also recognize and report to the contracting officer any Government required changes to the contract (e.g., items or work no longer required, changes in the specifications, etc.).

**VISITS AND MEETINGS WITH THE CONTRACTOR.**

Make arrangements with the contractor for periodic visits to the contractor's plant to: (1) evaluate the contractor's performance; (2) evaluate changes in the technical performance affecting personnel, the schedule, deliverables, and

price or costs; (3) inspect and monitor the use of Government property, if applicable; and (4) ensure that contractor employees being charged to the contract are actually performing the work under the contract. A trip report fully documenting all activities during the visit must be written and a copy provided to the contracting officer within three working days after the visit.

Document the file to record each meeting and telephone conversation with the contractor. A daily log book is recommended which should reflect the date, time, name, and title of individual(s) involved, the subject matter, and the details of the meeting or conversation.

**INSPECTION OF CONTRACT ITEMS.**

When notified by the contractor or the contracting officer, perform, in accordance with the terms of the contract, inspection, acceptance or rejection of the supplies, services, or construction. Immediately notify the contracting officer of all rejections and the reason for the action.

Review progress reports from the contractor and advise the contracting officer of any contractor problems or action required to be taken by the Government.

**STANDARDS OF CONDUCT AND CONFLICT OF INTEREST.**

The attached (FAR) 48 CFR Part 3 and (TAR) 48 CFR Part 1203/< HREF="chap1203.htm">TAM Chapter 1203, Improper Business Practices and Personal Conflict of Interest, provides guidance to avoid improper business practices and personal conflicts of interest and to deal with their apparent or actual occurrences. Please read these documents very carefully and contact the contracting officer should you require further information or clarification on this subject matter.

**CONTRACT FILE CONTENT AND MAINTENANCE.**

Establish and maintain an organized contract administration file to record all contractor and Government actions pertaining to the contract. The COTR's file is of particular importance since the documentation of your interaction with the contractor may be used in the event of litigation. In addition, an organized file facilitates an easy transition from one COTR to another if reassignment becomes necessary. The file(s) should be organized as follows:

- (1) File 1 - The contract instrument (i.e., contract modifications, task orders, delivery orders, and the contractor's proposals applicable to these documents).
- (2) File 2 - The COTR's delegation letter, and all correspondence between the contractor and the contracting officer, filed in chronological order.
- (3) File 3 - A copy of the contractor's invoices/vouchers and any correspondence pertaining to the payments.
- (4) File 4 - The COTR's trip reports and written memoranda to the file on telephone conversations or other meetings with the contractor.
- (5) File 5 - A copy of the contractor's progress reports and other contract deliverables, and all correspondence pertaining to these documents.

The size of the contract may not warrant a separate folder for each file. If less than five folders are used, the sections must be tabbed to segregate each file.

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached sheet to the contracting officer or contract administrator/specialist. Your appointment as the COTR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing contracting officer, the contracting officer's successor, or a higher level of authority. Please direct any questions you may have on this delegation to the contracting officer or contract administrator/specialist.

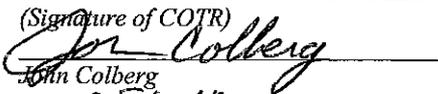
**EVALUATING PERFORMANCE.**

Within 30 days after the contractor has met all terms and conditions of the contract, you must evaluate the contractor's performance using the attached evaluation form which must be returned to me.

*Kathryn Rato*  
Attachments

I understand and accept my assignment as the Contracting Officer's Technical Representative (COTR) under Contract No. *DTMA4D10001* as outlined in your letter to me dated March 4, 2010

(Signature of COTR)

  
John Colberg

*05 MAR 10*  
(Effective Date)