

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
NOTIFICATION OF ASSISTANCE APPROVAL
(COOPERATIVE AGREEMENT)

PROJECT NUMBER: DTMA1H10007

TITLE: Further Development and Delivery of the Geospatial Intermodal Freight Transportation
(GIFT) Model

EFFECTIVE DATE: 9/27/2010

TOTAL AMOUNT OF THE AGREEMENT: \$146,057.00

ESTIMATED FEDERAL FUNDING: \$146,057.00

CURRENT FEDERAL OBLIGATION: \$146,057.00

OBLIGATION DATE: 9/24/2010

APPROPRIATION DATA: 70101750PE.2010 1PRE000EAC.0000141004.25305.6100.6600

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Maritime Administration, and the Recipient, University of Delaware as defined in Article 1 pursuant to and under U.S. Federal law.

The parties to this Agreement execute it by signing in the spaces provided below, as evidence and in acknowledgment of their intention to observe all the provisions hereof.

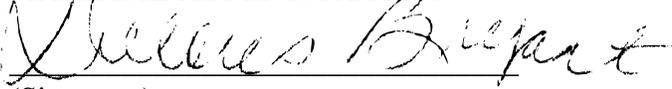
FOR THE RECIPIENT:

(Signature)

(Name & Title)

(Date)

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION:



(Signature)

Delores Bryant
Agreements Contracting Officer

(Name & Title)

(Date) 09/23/2010

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ARTICLE 1 - PARTIES

This COOPERATIVE AGREEMENT (Agreement) is entered into by and between the United States of America represented by the Department of Transportation, Maritime Administration (MARAD) and the University of Delaware, College of Marine Studies, (the Recipient).

ARTICLE 2 - AUTHORITY

MARAD enters into this Agreement pursuant to the authority in SEC. 3508 COOPERATIVE AGREEMENTS, ADMINISTRATIVE EXPENSES, AND CONTRACTING AUTHORITY, SECTION 109 OF TITLE 49.

ARTICLE 3 – SCOPE OF THE AGREEMENT

A. Background

The Maritime Administration (MARAD), Office of Environmental Activities, focuses on and participates in the development of environmental policy mechanisms that address maritime transportation environmental issues (e.g., air emissions generated from vessels and ports, invasive species in ballast water, and economic incentives). As the leading government agency with the responsibility for maritime transportation, it is vital that MARAD develops policy that is supported by sound research. This Agreement provides the necessary research foundation for marine transportation environmental issues. For each individual project, task orders will be developed that will detail terms, conditions, statement(s) of work, and funding.

MARAD will cooperate with the University of Delaware, College of Marine Studies (CMS), to foster and research marine environmental issues and mechanisms to promote voluntary environmental stewardship. The CMS is located in close proximity to Washington, DC and is staffed with highly qualified researchers that focus on issues of similar interests to MARAD. The missions of each member of this Agreement are as follows:

U.S. Maritime Administration: MARAD administers federal laws and programs designed to promote and maintain a U.S. Merchant Marine, the maritime industry, and marine transportation to meet the nation's shipping and transportation needs for both domestic and international commerce as well as national security.

University of Delaware, College of Marine Studies: The mission of the University of Delaware Graduate College of Marine Studies is to advance the knowledge, use, and conservation of global, estuarine, and coastal ocean environments through a program of excellence in research, teaching, and service. Founded in 1970, CMS is a graduate-only, interdisciplinary college committed to the development of skilled academic and professional leaders. Distinguished faculty, using state-of-the-art research and teaching facilities, provides hands-on research and educational opportunities in marine science and policy.

B. Scope

Over the past several years, the United States Department of Transportation, Maritime Administration (MARAD) has supported the development of the Geospatial Intermodal Freight Transportation (GIFT) model. This model is an ArcGIS based model that allows for the energy, environmental, economic, and time-of-delivery analysis of freight transportation options. GIFT currently operates in an ArcGIS desktop environment. The model has been used for a number of purposes, including: evaluation of attribute tradeoffs for short sea shipping, analysis of Great Lakes freight flows, exploration of environmental footprints for regions of the country, and analysis of areas of delay/congestion in the U.S. transportation network.

Using funding from MARAD and other sources, the Sustainable Intermodal Freight Transportation Research (SIFTR) program – a joint research program between the University of Delaware (UD) and the Rochester Institute of Technology (RIT) – has evolved GIFT through a three-phase development process. In Phase I (Conceptual Phase), GIFT was conceptualized and software platforms were explored. In Phase II (Prototype and Analysis Phase), GIFT was turned into a usable model in ArcGIS that takes user input values and allowed for the analysis of intermodal freight transport. Phase II also includes (or will include) advancements in interface design, emissions and energy calculations, and exploration of web access.

The SIFTR team is now preparing to enter into Phase III of the project (Advanced Capability and Accessibility Phase).

This scope of work outlines the tasks involved in this Phase III work to be funded through a cooperative agreement between MARAD and the University of Delaware. The overall goal of Phase III is to bring GIFT to a level that is accessible by a larger community of users and to develop the computing infrastructure to deliver GIFT to this wider audience.

Tasks

There are a number of sub-tasks for this scope of work, including:

1. **Task 1. Expand GIFT to the web.** In this task we would build off some current work exploring building expansion of GIFT to the web, while maintaining the desktop version as well. We are working on a Great Lakes project that has a goal of doing this for the GL region. We could leverage that work to expand GIFT to the nation as a whole. This will involve some different approaches to handling GIFT analysis (e.g., development of predetermined O-D matrices) that need to be explored. University of Delaware will develop system requirements for this expansion.
2. **Task 2. Establish mirror server for computing infrastructure.** GIFT requires a stable computing infrastructure and modeling development system to enhance its usability and allow for updates. This task involves developing that infrastructure, both in terms of hardware, systems administration, cataloging runs, and data management techniques. UD will develop a mirror server with RIT's server

3. **Task 3. Develop scenarios for exercising scenario management techniques.** GIFT can be used to analyze different scenarios. Currently, users run these scenarios and need to store/track results in some fashion outside of GIFT. Users must also track inputs used for these scenario runs. We would like this task to focus on developing a scenario management tool that allows users to store and access input and output files in some appropriate fashion. UD will be responsible for scenario development for testing and validation of these scenario management tools.
4. **Task 4. Develop values and shape files for intermodal transfer impacts.** GIFT currently includes time, cost, and environmental “penalties” for intermodal transfers. However, an added feature in GIFT would be the inclusion of accurate dwell times in cases where no transfers occur. Related to this is the inclusion of some other delays and penalties, for example delays at locks, border crossings, ferry routes, or other geographical features. UD will develop values for the evaluators, refine calculation methods, and generate GIS shape files and databases.
5. **Task 5. Identify cost function improvements informed by technology and operations.** We have ongoing work to improve the cost calculations for GIFT in order to allow maximum flexibility for the user. This task will continue those efforts. These “costs” (with particulate attention to economic cost functions and transfer penalties) could be expanded. University of Delaware (UD) will provide technology characteristics and operations to inform calculations and express the system requirements for these cost functions.
6. **Task 6. Develop vessel, truck, and locomotive database and library.** This task involves developing and expanding the library of vehicles, locomotives, and vessels so that users will be able to select specific types of transportation modes for analysis. The University of Delaware (UD) will have primary responsibility for developing this library.
7. **Task 7. Provide data, validate, and test freight flow analysis toolbox.** Currently GIFT can be run with single O-D pairs or a set of O-D pairs. However, macro-level freight flow analysis requires that users have an ability to apply freight data related to volume (TEU) or mass (tonnage) of freight for individual O-D pairs to construct output such as environmental footprints or total freight cost analysis. This task will work to include macro-level freight flows (e.g., CFS freight flow data) into the GIFT model. The University of Delaware will be the lead in developing data, validating the freight flow system, and prototype testing this toolbox. University of Delaware (UD) will also be involved in GIS development of the toolbox.
8. **Task 8. International and system based case study analysis.** This task would involve identifying and conducting a larger set of case studies to help exercise GIFT and demonstrate its uses. A systematic development of case study identification with stakeholder input would be part of this process. University of Delaware (UD) will develop case studies that focus on worldwide freight transport.

9. **Task 9. Visualization requirements development and validation.** There are approaches by which we could apply visualization techniques in order improve the ability of users to “see” the output of the model. This task involves testing and applying such techniques. University of Delaware (UD) will be responsible for creating systems requirements for the visualization approaches and running validation and test cases to improve the visualization system.

10. **Task 10. Needs identification and feasibility study.** This task involves conducting a needs identification and feasibility study task beyond Phase 3 to address other developmental features in GIFT. Some of the features we would consider include:
 - a. Metric conversion
 - b. Transfer cost calculator (check on/off equipment used, etc.)
 - c. Automatically “search” for the cost values that provide mode parity
 - d. Incorporate automatic sensitivity analysis
 - e. Develop database of barriers and restrictions (height, weight, HazMat, etc.)
 - f. Develop database of specific facility characteristics
 - g. Develop support other applications such as logistics modeling, critical infrastructure assessment, disaster response, etc.

Timeline and Budget

This would be a two-year project. The total budget for this work will be \$146,057.00
Progress reports will be due by the end of every other month.

University of Delaware should consider efforts to protect data and their website by following security and privacy controls and establishing quality assurance and monitoring.

University of Delaware should consider efforts to follow 508 compliance guidelines.

ARTICLE 4 - ACCOUNTING AND APPROPRIATION DATA RESERVED

ARTICLE 5 - DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

(a) The term "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and the term authorized representative means any person, persons, or board (other than the Agreements/Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) The term "Agreements/Contracting Officer" means a person with the authority to enter into, administer, and/or terminate agreements and contracts and make related determinations and findings.

The term includes certain authorized representatives of the Agreements/Contracting Officer acting within the limits of their authority as delegated by the Agreements/Contracting Officer.

(c) Except as otherwise provided in this Agreement, the term subcontracts includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this Agreement.

(d) The term “MARAD” means the Maritime Administration.

(e) The term “subcontractor” means a contractor to the Recipient and all tiers of subcontractors hereunder.

ARTICLE 6 - CONSIDERATION AND METHOD OF PAYMENT

The Maritime Administration will make payment on a per project basis. Invoices will be requested and shall be payable to the Recipient within 30 (thirty) days of receipt.

ARTICLE 7 - PERIOD OF PERFORMANCE

The period of performance shall commence as of the effective date as indicated on the front of this document and shall remain in full force and effect for 60 months (five years), in accordance with its provisions, unless sooner terminated as provided for herein or extended by mutual agreement in accordance with the article entitled Modifications.

ARTICLE 8 - FUNDING RESOURCES AND ACCOUNTABILITY

This Agreement involves the transfer of MARAD funds to the University of Delaware based upon accomplishing specific Phases.

Additional allotments (funds) may be made to this Cooperative Agreement by MARAD as appropriated funds become available. A modification to this Cooperative Agreement will stipulate how these funds will be allocated to specific Milestone/Progress Payments.

ARTICLE 9 -INDEMNITY

The Recipient agrees to indemnify and hold the Government harmless from all liability for the Recipient’s own acts and omissions and the results thereof. The Recipient assumes all risk, responsibility, and liability for itself, its agents, staff, employees and research personnel for monetary or other losses to persons, properties or entities resulting in any manner from the conduct of its operations in which the products and services identified herein are utilized and/or furnished to others.

ARTICLE 10 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE- (AOTR)

- a. Daniel E. Yuska is hereby designated as the AOTR for this Agreement. The AOTR is located at the Department of Transportation, Maritime Administration (MAR-410), Office of Environment, 1200 New Jersey Avenue, S.E., W28-228, Washington, D.C. 20590. He may be reached at telephone (202) 366-0714.
- b. The AOTR is responsible for the technical aspects of the project and technical liaison with the Recipient.
- c. The AOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes, which affect the Agreement price, terms or conditions. Any Recipient request for changes shall be referred to the Agreements Officer.

ARTICLE 11 - RECIPIENT'S KEY PERSONNEL

The Recipient's representatives are considered essential to the work being performed under this Agreement. The Recipient shall notify the AOTR in advance if there is intent to change or replace any representative in advance thereof, and shall replace such departed individual with an equally qualified person.

ARTICLE 12 - ADDRESS OF CORRESPONDENCE

All correspondence except as otherwise specified shall be directed to the Agreements/Contracting Officer at the following address.

Delores Bryant
Department of Transportation
Maritime Administration
Office of Acquisitions, MAR-380
1200 New Jersey Avenue, SE – W26/420
Washington, DC 20590

ARTICLE 13 - SUSPENSION OR TERMINATION

As prescribed by OMB Circular A-110, the following definitions apply under this Article:

Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Suspension - The suspension of a grant or other agreement is an action by a Federal sponsoring agency that temporarily suspends Federal sponsorship under the grant or other agreement, pending corrective action by the Recipient or pending a decision to terminate the grant or other agreement by the Federal-sponsoring agency.

When the Recipient has failed to comply with the terms of the grant or other agreement and conditions or standards, MARAD may on reasonable notice to the Recipient, suspend the grant or other agreement, pending corrective action by the Recipient, or a decision by MARAD or the Recipient to terminate in accordance with the provisions listed below for termination for cause or termination for convenience. MARAD shall allow all necessary and proper costs that the Recipient could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles.

MARAD's provisions for the systematic settlement of terminated grants or other agreements include the following:

- (1) **Termination for Cause** - MARAD may reserve the right to terminate any grant or other agreement in whole or in part at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the Agreement. MARAD shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Recipient or recoveries by MARAD under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.
- (2) **Termination for Convenience** - MARAD or Recipient may terminate grants and other agreements in whole or in part when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds by either party. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. MARAD shall allow full credit to the Recipient for the Federal share of the noncancellable obligations, properly incurred by the Recipient prior to termination.

ARTICLE 14 – MODIFICATION CHANGES

- (a) The Agreements Officer may make changes requested by the Recipient, within the general scope of this Agreement, in the services to be performed.

- (b) The Agreements Officer may at any time, by a written order and without notice to the sureties, make changes, within the general scope of this Agreement, in the services to be performed, including reporting requirements related thereto. No oral statement of any person, and no written statement of anyone other than the Agreements Officer, shall modify or otherwise affect the terms of this Agreement.
- (c) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any services under this Agreement whether changed or not changed by any such order, an equitable adjustment shall be made in the estimated cost, fee, if any, and performance period, and this Agreement shall be modified in writing accordingly.
- (d) The Recipient shall, within thirty (30) days after receipt of a written change order, or within such additional period or periods as may be allowed by the Agreements Officer, submit a written statement with supporting details as to whether or not the change order has increased or decreased or will increase or decrease the cost of or the time required for the performance of any part of the work under this Agreement, whether changed or not changed by any such order. The Recipient shall promptly provide such additional, supporting details as may be requested by the Agreements Officer.

In the event of failure of the Recipient to submit such written statement or details, the Agreements Officer may determine, on the basis of available information, the extent of applicable equitable adjustment, if any, but the reservation of such right or determination shall not excuse the Recipient from complying with the submission requirement.

- (e) Subject to the provisions of paragraph (d) above, the Recipient and the Agreements Officer may agree upon the equitable adjustment to be made in the price or performance period, or both, and this Agreement shall be modified in writing accordingly. In the event of their failure to agree upon the equitable adjustment, the Agreements Officer shall determine, on the basis of information available to him, the equitable adjustment, if any.
- (f) Failure to agree to any equitable adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes Article contained herein. However, nothing in this Article shall excuse the Recipient from proceeding with this Agreement as changed.
- (g) Notwithstanding the provisions of paragraphs (b) and (c) above, the estimated cost of this Agreement shall not be increased or deemed to be increased except by specific written modification of this Agreement indicating the new estimated cost.

ARTICLE 15 - DISPUTES

The Agreements Officer who shall reduce the decision to writing and mail a copy thereof to the Recipient shall decide all disputes of fact or of interpretation under this Agreement not disposed of by mutual agreement. Within thirty (30) days of receipt of such written decision, the Recipient may appeal in writing to the Associate Administrator for Administration, Maritime Administration. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Recipient and the Agreements Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision, which shall be final and conclusive upon the parties as to questions of fact. The Contract Disputes Act of 1977 does not apply to this Agreement.

ARTICLE 16 - ORDER OF PRECEDENCE

This Agreement, in its entirety, is comprised of these Provisions and OMB Circular A-110 dated September 30, 1999. In the event of inconsistency, these Provisions shall control, except when an authorized deviation is required by Subpart A. paragraph 4 of OMB Circular A-110.

FINANCIAL STATUS REPORTING

(REF: OMB CIR A-110, Subpart C, and Ihara 521

The Recipient must submit on a quarterly basis, a Financial Status Report using either form SF 270 or SF as set forth in OMB Circular A-110, Subpart C, and Para 52.

ARTICLE 17 - INVOICE REQUIREMENTS

a. MARAD will make payment by electronic funds transfer (EFT) under this agreement. Payment will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date of the EFT issued in payment shall be considered to be the date payment is made.

b. Invoices shall be submitted monthly in an original and one copy to DOT/Enterprise Services Center (ESC), MARAD A/P Branch, AMZ-15, Oklahoma City, OK 73125. To constitute a proper invoice, the following information and/or attached documentation must be included, attached to Standard Form (SF270): Invoices should be email to: MaradInvoices@faa.gov.

1. Name of the business concern and invoice date
2. Cooperative Agreement number
3. Invoice number;
4. Cumulative, cost-reimbursable invoice reflecting expenditures for each quarter;
5. Other substantiating documentation or information as required by the Agreements Officer

- c. The University of Delaware shall forward the following information in writing to the financial Institution, not later than seven (7) days after receipt of notice of award, with one copy to the Agreements Officer: Full name, Title, phone number, company IRS Taxpayers ID number, Duns Number, complete account information of responsible financial institution(s), to whom electronic payments are to be sent and who may be contacted concerning invoices.
- d. Final invoices should be submitted no later than 120 days following the project completion and MARAD's receipt of final deliverables. Funds remaining beyond the project completion and/or period of performance may be subject to de-obligation.

ARTICLE 18 - PERFORMANCE REQUIREMENTS

The performance of this Agreement shall be in accordance with the Provisions contained herein and OMB Circular A-110.

ARTICLE 19 - RIGHTS IN DATA

The Government shall have rights to computer software and data first produced in the performance of this Agreement including manuals or instructional material. Rights as used in this clause, means the right to use, disclose, prepare derivative works, and perform publicly and display publicly, and to have or permit others to do so. "Computer software" as used in this clause, means computer programs including source code, computer databases, and documentation thereof. The Recipient shall have the same rights to computer software and data produced under this Agreement.

ARTICLE 20 - INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If the Government on the premises of the Recipient or the subcontractor makes any inspection or evaluation, the Recipient shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work.

ARTICLE 21 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

- a. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient and any subcontractors shall be retained for a period of three (3) years, following expiration of this Agreement.
- b. The retention period starts from the date of the submission of the final expenditure report.

- c. MARAD shall request transfer of certain records to its custody from the Recipient when it determines the records have long-term retention value. However, in order to avoid duplicate record keeping, a Federal-sponsoring agency may make arrangements with the Recipient to retain any records that are continuously needed for joint use.
- d. The Head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and its subcontractors to make audits, examinations, excerpts and transcripts.
- e. Unless otherwise required by law, MARAD shall not place restrictions on the Recipient that will limit public access to the records of the Recipient that are pertinent to this Agreement except when MARAD can demonstrate that such records must be kept confidential and would have excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal-sponsoring agency.

ARTICLE 22 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

ARTICLE 23 - COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 24 - PERMITS, LICENSES AND RESPONSIBILITIES

The Recipient shall, without expense to the Government, be responsible for obtaining any necessary licenses and permits and for complying with any Federal, State, and municipal laws, codes and regulations applicable to performance of any work accomplished under this Agreement. The Recipient shall also be responsible for all damages to persons or property that occur, and shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

ARTICLE 25 - PAYMENT OF INTEREST ON RECIPIENTS CLAIMS

If an appeal is filed by the Recipient from a final decision under Article 15, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient. Such interest shall be at the rate determined pursuant to Public Law 95-563 and shall be completed from the date of the request for decision by the Associate Administrator for Administration.

ARTICLE 26 - TRAVEL

All travel in connection with this Agreement shall be performed in accordance with the prevailing Federal Travel Regulations. Travel will be reimbursed on an actual, allowable basis. Copies of travel receipts must be maintained with the CMS Business Office, and available for audit.

ARTICLE 27 - EQUAL OPPORTUNITY

During performance of this Agreement, the Recipient agrees as follows:

- (1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

- (3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (4) The Recipient shall comply with E rules, regulations, and orders of the Secretary of Labor.
- (5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.

- (6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive Order 11246, as amended the rules, regulations, and orders of the Secretary of Labor or as otherwise provided by law.
- (7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

ARTICLE 28 - DRUG-FREE WORKPLACE

The Certification regarding a Drug-Free Workplace is contained in Attachment B and is incorporated into this Agreement.

ARTICLE 29 - AVAILABILITY OF FUNDS

Funds are not presently available for performance under this Agreement. The Government's obligation for funding is contingent upon the availability of appropriated funds from which payment for this purpose can be made. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the initial program year until funds are made available to the Agreements Officer for performance and until the Recipient receives notice of availability, to be confirmed in writing by the Agreements Officer.

ARTICLE 30 - PROCUREMENT STANDARDS

The Recipient, and the Recipient's subcontractors, shall comply with the standards listed in OMB Circular A-110, for all procurement actions pursuant to this Agreement. The Government has the right to review records of the Recipient and the Recipient's subcontractor's for the purposes of determining compliance with the standards set forth in OMB Circular A-110.

If any of the following cases apply, the Recipient shall forward the proposed contract to the Agreements Officer for review and approval prior to award:

- (1) The proposed contract is to be awarded on a sole source basis or where only one bid or proposal is received in which the aggregate expenditure exceeds \$5,000. (All proposed contracts specifying "brand name" products should be considered sole source procurements.)

- (2) All proposed contracts in which the aggregate expenditure exceeds \$100,000 (See Article 32 below).
- (3) All proposed contracts if it has been determined that the Recipient does not comply with the standards listed in OMB Circular A-110.

ARTICLE 31 - ADMINISTRATION OF COOPERATIVE AGREEMENT

After award of this cooperative agreement the Agreements Contracting Officer shall be provided with copies of the following information for review and approval.

- (1) Detailed invoices submitted in accordance with Article 17.
- (2) Financial status report that are submitted quarterly.
- (3) Technical status reports (review only).

ARTICLE 32 - LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

a. Definitions

“Agency,” as used in this clause, means executive agency as defined in 2.101.

“Covered Federal action,” as used in this clause, means any of the following Federal actions:
actions:

The awarding of any Federal contract

The making of any Federal grant

The making of any Federal loan

The entering into of any cooperative agreement

The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

“Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in Section 4. of the Indian Self -Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent of influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of congress in connection with any covered Federal action.

“Local Government”, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual, who is appointed to a position in the Government under Title 5, United States code, including a position under a temporary appointment
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in Section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient,” as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, means with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

b. Prohibitions

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - A. Agency And Legislative Liaison By Own Employees
 - (1) The prohibition on the use of appropriated funds, in subparagraph b. (1) of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and

legislative liaison activities not directly related to a covered Federal action.

- (2) For purposes of subdivision b. (3) A. of this clause, providing any information specifically requested by agency or Congress is permitted at any time.
- (3) The following agency and legislative liaison activities are permitted at any time where they are not related to specific solicitation for any covered Federal action:
 - (A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
 - (A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (4) Only those services expressly authorized by subdivision (b)(3) A. (1) of this clause are permitted under this clause.

B. Professional and Technical Services

- (1) The prohibition on the use of appropriated funds, in subparagraph b. (1) of this clause, does not apply in the case of--
 - (A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification

of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

- (B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (2) For purposes of subdivision b. (1) A. of this clause, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients proposal, but generally advocate one proposal over another are not allowable under this action because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but is not directly involved in the preparation, submission or negotiation of a covered federal action.
- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation and any other requirements in the actual award documents.

- (4) Only those services expressly authorized by subdivisions b. (3) B. (1)(A) and (B) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure

- (1) The Contractor who requests or receives from an agency a federal contract shall file with the agency a disclosure form, OMB Standard Form DLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph b. (1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph c. (1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the subcontractor submits the disclosure form. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

D. Agreement. The Contractor agrees not to make any payment prohibited by this clause.

E. Penalties -

- (1) Any person who makes expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

F. Cost Allowability. Nothing in this clause makes allowable or reasonable any costs, which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this class will not be made allowable under any other provision.

ARTICLE 33 – CLEAN AIR AND FEDERAL WATER POLLUTION

The University of Delaware shall comply with the requirements of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251 et seq.) during performance on this Agreement. Any sub-awards in excess of \$100,000 shall contain a provision that requires the University of Delaware to agree to comply with all applicable standards, orders, or regulations issued pursuant to the above acts. Violations shall be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency.