

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	Page 1 of 31
2. AMENDMENT/MODIFICATION NO. 0001	3. EFFECTIVE DATE 07/16/2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)		
6. ISSUED BY DOT/Maritime Administration, MAR-380 1200 New Jersey Ave SE, MAR380 W26-429 Washington, DC 20590		CODE 00091	7. ADMINISTERED BY (If other than Item 6)		CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) INTEGRATED CONCEPTS AND RESEARCH CORPORATION 2550 Huntington Avenue, Suite 109 ALEXANDRIA, VA 22303-1400		9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
		(X) 10A. MODIFICATION OF CONTRACT/ORDER NO. DTMA1D08012
		(X) 10B. DATED (SEE ITEM 13) 07/15/2008
CODE S	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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

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

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

12. ACCOUNTING AND APPROPRIATION DATA (If required)

No Funding Information

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.

IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

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

E. IMPORTANT: Contractor is not, is required to sign this document and return 1 copies to the issuing office.

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

See Continuation Pages 1-5 and pages 3-31 of this modification.

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

15A. NAME AND TITLE OF SIGNER (Type or print) Bill Clark, VP Contracts & Purchasing	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Wayne Leong
15B. CONTRACTOR/OFFEROR Bill Clark (Signature of person authorized to sign)	15C. DATE SIGNED 6/1/10
16B. United States of America BY Wayne W. Leong (Signature of Contracting Officer)	16C. DATE SIGNED 6/23/10

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2. AMENDMENT/MODIFICATION NO. 0001	3. EFFECTIVE DATE 10/30/2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)		
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15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Wayne Leong	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. United States of America BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED

Line Item Summary	Document Number DTMA1D08012/0001	Title Port of Anchorage Expansion Project	Page 2 of 31
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Line Item Number	Description	Delivery Date (Start date to End date)	Quantity	Unit of Issue	Unit Price	Total Cost
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No Changed Line Item Fields

Previous Total:
Modification Total:
Grand Total:

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SECTION G -- CONTRACT ADMINISTRATION DATA

G.1 CONTRACT ADMINISTRATION

Contract administration shall be as set forth below and in accordance with the special contract requirement(s) of this Contract.

INVOICE REQUIREMENTS

- a. The Contracting Officer agrees to pay the Contractor on a bi-monthly basis, upon submission of a proper invoice for services and/or supplies in the amount of five thousand dollars (\$ 5,000) or more. Individual invoices may be submitted for each task order.
- b. The contractor shall submit invoices through the MARAD Electronic Invoice System (EIS) and inform MARAD of the submittal to EIS.
- c. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:
 - (1) Name of business concern.
 - (2) Invoice date.
 - (3) Contract number, or other authorization for supplies delivered or services performed (including task order and/or contract line item number).
 - (4) Description, price and quantity of supplies and services actually delivered or rendered.
 - (5) Shipping and payment terms.
 - (6) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.
 - (7) Other substantiating documentation or information as required by the contract or Contracting Officer.
- d. The on-line version of the invoice shall provide the ACO with the capability of approving in full or partial payments or rejecting invoices in total. DCAA will be provided with access to the website for the purpose of concurrent auditing. The contractor shall maintain a satisfactory accounting system during the life of the contract.

POINTS OF CONTACT

a. PROCURING CONTRACTING OFFICER (PCO):

Wayne Leong
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
OFFICE OF ACQUISITION, MAR-380
1200 NEW JERSEY AVENUE, S.E.
2ND FLOOR, W28-201
WASHINGTON, DC 20590
Telephone 202 366-5620
E-Mail Address: wayne.leong@dot.gov

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b. LOCAL CONTRACT ADMINISTRATION (LCA)

Greg Cagle
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
421 WEST FIRST AVENUE, SUITE 200
ANCHORAGE, AK 99501
Telephone 907 264-8913
E-Mail Address: greg.cagle@dot.gov

All correspondence shall be directed to the Procuring Contracting Officer, copy to the local contract administrator, except as otherwise specified.

c. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR):

SUSAN LEE
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
PORTS
1200 NEW JERSEY AVENUE, S.E.
2ND FLOOR, W
WASHINGTON, DC 20590
Telephone: 202 366-2320
E-Mail Address: Susan.Lee@dot.gov

d. ASSISTANT CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (ACOTR)

ROBERT M. BOUCHARD
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
PORTS
1200 NEW JERSEY AVENUE, S.E.
2ND FLOOR, W
WASHINGTON, DC 20590
Telephone: 202 366-5076
E-Mail Address: robert.bouchard@dot.gov

The COTR is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract/task orders.

The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer. The COTR may designate assistant COTR(s) to act for him by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor.

The COTR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing.

TRAVEL REQUIREMENTS

Travel associated with this contract or resulting Task Orders, shall be performed by the Contractor in direct support of this contract shall be reimbursed on a reasonable, actual, allowable basis in accordance with the Federal Travel Regulations. Reimbursement for travel done in concurrence with another Government contract shall be pro-rated according to the number of man-hours expended on each contract; at no time shall either Government agency be

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charged with the full cost of the travel.

Travel cost must be broken out by each element i.e., airfare, lodging subsistence, car rental, taxi, etc.

TASK ORDER PROCESS

GENERAL

Any supplies or services to be furnished by the Contractor under this contract shall be authorized by the issuance of a Task Order

ISSUANCE

The scope of individual Task Order may vary widely from one another. The Contractor shall not commence work until they receive a Task Order signed by the Contracting Officer.

Prior to issuance of a Task Order the Contractor shall submit via the Contract Management System a written specification, cost estimate and time estimates, for completion of the required work. The specification will be reviewed, approved or modified by MARAD prior to issuance of a Task Order. At a minimum, the cost estimate shall include the labor and material cost for each item.

If emailed, mailed or faxed, a Task Order is considered issued when the Government presses the send key or deposits the Task Order in the mail. The Government will also issue the task order in the Contract Management System as a parallel action. The Contractor must acknowledge receipt within three calendar days from receipt of the Task Order.

TASK ORDER NUMBERING

The Port of Anchorage project consists of the following phases:

- Road and Rail
- Barge Terminal
- Intermodal Facility - dock, cruise terminal, etc.

Numbering of task orders will follow the following work elements by each phase:

- Task Orders 3101-3199 - Program Management Activities
- Task Orders 3201-3299 - Environmental Activities
- Task Orders 3301-3399 - Engineering & Design Tasks
- Task Orders 3401-3499 - Construction
- Task Orders 3501-3599 - Security Work
- Task Orders 3601-3699 - Port Planning and Market Niche Studies

Content - When proposing task orders, the Contractor shall include the following:

- Proposed number and title
- Description of task including specific deliverables
- Delivery schedule
- Key Personnel for task
- Task cost makeup including individuals proposed to do the work, hours, labor rates, overhead and G&A rates, material including material handling costs, and fee, plus any other cost documentation
- Date by which task must be issued, if project critical path would be affected

ACCEPTANCE OF THE TASK ORDER

Implied Acceptance, Acceptance of the Task Order by the Contractor shall be implied, if, after three calendar days of receipt, the Contractor has not notified the COTR, either orally or in writing, of problems and/or disagreements with the Task Order

After the commencement of a Task Order, the Contractor shall notify the Contracting Officer in

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writing of the need to revise the Task Order, or to request additional funding to complete the task.

EXPENDITURE AND TRACKING OF REIMBURSABLE FUNDS

Upon receipt of the authority to commit funds, the Contractor will issue an order for the supplies and/or services, in accordance with the procedures set forth in Attachment J-2 Purchasing Policies for Subcontracting Contracts with in the Maritime Administration.

It is the Contractor's responsibility to track all funding obligated and funds available on each T.O. Funds shall be further tracked to show the status of the purchase order(s) issued, funds obligated and expended, and the T.O. closed out. All tracking shall be done utilizing the web-based system developed for the Port Expansion Project.

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SECTION H -- SPECIAL CONTRACT REQUIREMENTS

H.1 SPECIAL CONTRACT REQUIREMENTS

SUPERVISION

The Contractor shall provide at all times the quantity and quality of supervision necessary for the effective and efficient management of the operation. All supervisors shall have an intimate knowledge of the various tasks, equipment, and materials so as to be able to properly train and direct the workers in their individual tasks and to maintain and control an effective operation.

STANDARDS OF EMPLOYEE CONDUCT

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct and integrity, and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary.

ORGANIZATIONAL CONFLICTS OF INTEREST

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies - The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor is aware of potential organizational conflict of interest prior to award or; discovered an actual or potential conflict after award and, did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default. Debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions, which shall conform substantially to the language of this clause, including this paragraph (d) in any subcontract or consultant agreement hereunder.

OPERATION ON OTHER'S PROPERTY

The Contractor agrees to comply with the requirements of other organizations while on their property in the performance of the work called for by this contract.

KEY PERSONNEL

(a) The Contractor shall assign to this contract the following key personnel:
Table H-1 Key Personnel Information

President and Chief Operating Officer: Carl Williams
Principal in Charge: Diana Carlson
PIEP Program Manager: Lyn Dokoozian, PE

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Program Manager (Prime Contract/Administration): Constance Black
Deputy Program Manager: Elaine Test
Deputy Program Manager: Scott Yancey
Project Technical Advisor: Brett Flint, PE

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless illness, death, or termination of employment necessitates the substitution. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by the next paragraph below. **After the initial 90-day period**, the Contractor shall submit the information required by paragraph (c) below, to the Contracting Officer **at least 15 days prior** to making permanent changes.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitution(s), complete resumes for the proposed substitute(s), and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

CONTRACT NOT AFFECTED BY ORAL AGREEMENT

No oral agreement shall be made by any person(s), other than the Contracting Officer, and this shall only be in cases of Emergency(ies) The Contracting Officer is the only individual authorized to modify or otherwise affect the Scope of Work or other terms and conditions, as herein stated. All oral agreements shall be followed-up in writing by the Contracting Officer.

RIGHTS IN DATA

As prescribed FAR 52.227-14 Right in Data-General (JUN 1987), the Government shall have unlimited rights to all in -

- a. Data first produced in the performance of this contract
- b. Form, fit and function data delivered under this contract
- c. Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation or routine maintenance and repair items, components or processes delivered or furnished for use under this contract.

PERFORMANCE EVALUATION

a. Contractor performance shall be evaluated by the Contracting Officer throughout the life of the contract. Contractor product and services, which do not meet the minimum quality standards specified in Attachment J-1 - Statement of Work, and elsewhere in this contract, may be subject to correction These corrections may include but are not limited to the following:

- 1. Re-performance by the Contractor, as directed by the Contracting Officer
- 2. Re-performance by the government, with re-performance costs charged to the Contractor.
- 3. Termination for default.
- 4. The foregoing shall not be construed as a waiver nor a modification of any rights available to the Government under FAR clauses 52.246-2 or 52.246-4, as incorporated in Section E. Inspection and Acceptance; nor of any other right or corrections available to the government.
- 5. The Contracting Officer, with the assistance of the COTR shall prepare a semi-annual Contractor performance evaluation IAW FAR 42.1502. A copy of this evaluation shall be forwarded to the Contractor for review and comment. The Contractor shall have not

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less than 30 days to submit written comments, rebutting statements, or additional information to the Contracting Officer. The completed evaluation shall not be released to other than government personnel and the contractor whose performance is being evaluated.

FIXED PRICE LABOR HOUR

The contractor shall provide no more than the number of labor hours specified in each Task Order at the specified unit price/hourly labor rate (which includes other direct cost (ODC), overhead, general and administrative (G&A) expenses, and fee). The total number of labor hours shall be exclusive of vacation, sick leave and holiday hours and travel.

VERIFICATION OF LABOR HOURS, CONSIDERATION AND PAYMENT

(1) To support payment for work performed under Task Orders, the invoice(s) submitted therefore shall include a certification by the contractor stating that the number of labor hours stated are the actual number of labor hours expended during the period for which the invoice(s) are submitted. The invoices will be submitted to the paying officer. The Contracting Officer will evaluate invoices prior to payment.

(2) Upon completion of the performance of the work called for in Section B above, the Contracting Officer or duly authorized representative shall have the right to examine the Contractor's records for the purpose of verifying the number of labor hours utilized in the performance of the work thereunder.

(3) Upon submission of properly certified invoice(s), the government shall make payment(s) to the contractor in accordance with FAR 52.216-7.

(4) In no event shall the total payments made under the contract exceed the contract CEILING AMOUNT set forth in in this contract without approval of the Contracting Officer.

H.2 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.

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(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.

(End of clause)

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SECTION I -- CONTRACT CLAUSES

I.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

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

Clause	Title	Date
52.222-44	Fair Labor Standards Act and Service Contract Act - Price Adjustment	September 2009
52.225-01	Buy American Act - Supplies	February 2009
52.222-43	Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)	September 2009
52.222-41	Service Contract Act of 1965	November 2007
52.215-02	Audit and Records--Negotiation	March 2009
52.223-09 Alt I	Estimate of Percentage of Recovered Material Content for EPA Designated Products (Aug 2000) - Alternate I	May 2008
52.232-25	Prompt Payment	October 2008
52.230-03	Disclosure and Consistency of Cost Accounting Practices	October 2008
52.232-17	Interest	October 2008
52.230-02	Cost Accounting Standards	October 2008
52.204-07	Central Contractor Registration	April 2008
52.203-05	Covenant Against Contingent Fees	April 1984
52.232-27	Prompt Payment for Construction Contracts	October 2008
52.244-06	Subcontracts for Commercial Items	December 2009
52.211-05	Material Requirements	August 2000
52.225-13	Restrictions on Certain Foreign Purchases	June 2008

I.2 52.223-02 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS DECEMBER 2007

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 et seq.). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.usda.gov/biopreferred>.

(End of clause)

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I.3 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION

JANUARY 2009

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements. (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees. (A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

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- (i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
- (ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- (c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- (d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
 - (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
 - (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
 - (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.
- (e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—
 - (1) Is for— (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
 - (ii) Construction;
 - (2) Has a value of more than \$3,000; and
 - (3) Includes work performed in the United States.

(End of clause)

I.4 52.203-14 DISPLAY OF HOTLINE POSTER(S)

DECEMBER 2007

- (a) Definition.
"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.
- (b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—
 - (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
 - (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
 - (3) Any required posters may be obtained as follows:

Poster(s)	Obtain from
_____	_____

- (Contracting Officer shall insert— (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and
- (ii) The website(s) or other contact information for obtaining the poster(s).)
- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—
 - (1) Is for the acquisition of a commercial item; or
 - (2) Is performed entirely outside the United States.

(End of clause)

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I.5 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

DECEMBER 2008

(a) Definitions. As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”— (1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor’s disclosure as confidential where the information has been marked “confidential” or “proprietary” by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization’s jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor’s standards and procedures and other aspects of the Contractor’s business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual’s respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor’s principals and employees, and as appropriate, the Contractor’s agents and subcontractors.

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(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

I.6 52.252-02 CLAUSES INCORPORATED BY REFERENCE

FEBRUARY 1998

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

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

I.7 52.244-02 SUBCONTRACTS

JUNE 2007

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(a) Definitions. As used in this clause--

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

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(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

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ALT I MATERIAL SAFETY DATA (JAN 1997) - ALTERNATE I

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material Identification No.

(If none, insert "None")

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

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(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.9 52.219-09 SMALL BUSINESS SUBCONTRACTING PLAN

APRIL 2008

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2)

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be

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included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

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(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, servicedisabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

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(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of

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potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier

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subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

(1) **ISR.** This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) **SSR.** (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

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(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the yearend SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

I.10 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS MAY 2008

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

(End of clause)

I.11 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS DECEMBER 2007

(a) Definitions. As used in this clause—

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptop-style computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see www.epeat.net.

(End of clause)

I.12 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS DECEMBER 2007

(a) Definition. As used in this clause—

“Energy-efficient product”— (1) Means a product that—

- (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
- (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

- (1) Delivered;

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- (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
- (3) Furnished by the Contractor for use by the Government; or
- (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
 - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
 - (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for—
 - (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

(End of clause)

I.13 52.223-11 OZONE-DEPLETING SUBSTANCES MAY 2001

(a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

I.14 52.223-10 WASTE REDUCTION PROGRAM AUGUST 2000

(a) Definitions. As used in this clause—

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR part 247).

(End of clause)

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I.15 52.223-05 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION AUGUST 2003

(a) Definitions. As used in this clause-

"Priority chemical" means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C.11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

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

J.1 ATTACHMENTS

- J-1 Statement of Work
- J-2 Purchasing Policies for Subcontracting Contracts with the Maritime Administration
- J-3 Award Fee Plan
- J-4 Labor Rates

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

K.1 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING AUGUST 2003

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: **[Check each block that is applicable.]**

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.

K.2 52.223-04 RECOVERED MATERIAL CERTIFICATION MAY 2008

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(End of provision)

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K.3 52.223-01 BIOBASED PRODUCT CERTIFICATION

DECEMBER 2007

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 (7 U.S.C. 8102(c)(3)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

K.4 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

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

Clause	Title	Date
52.225-09	Buy American Act - Construction Materials	February 2009
52.225-10	Notice of Buy American Act Requirement - Construction Materials	February 2009
52.225-12	Notice of Buy American Act Requirement - Construction Materials under Trade Agreements	February 2009
52.225-11	Buy American Act - Construction Materials under Trade Agreements	August 2009

Continuation Pages:

Modifications 0001 hereby incorporates changes as noted below.

1. Add the following FAR clauses:

52.203-13 Contractor Code of Business Ethics and Conduct (Dec 2008)

52.203-14 Display of Hotline Poster(s) (Dec 2007) in full text

Fill-in required

Poster(s)	Obtain from

52.211-05 Material Requirements (Aug 2000)

52.222.54 Employment Eligibility Verification (Jan 2009) in full text

52.223-01 Biobased Product Certification (Dec 2007)

52.223-02 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Dec 2007)

52.223-03 Hazardous Material Identification and Material Safety Data (Jan 1997) - Alternate I (Jul 1995)

52.223-04 Recovered Material Certification (May 2008)

52.223-05 Pollution Prevention and Right-to-Know Information (Aug 2003)

52.223-10 Waste Reduction Program (Aug 2000)

52.223-11 Ozone-Depleting Substances (May 2001)

52.223-13 Certification of Toxic Chemical Release Reporting (Aug 2003)

52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)

52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007)

52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (May 2008)

2. Revise/Update Contract Section G, Contract Administration Data as follows:

Points of Contact, Contracting Officers Technical Representative (COTR)
Susan Lee
U.S. Department of Transportation
Maritime Administration
Ports
1200 New Jersey Avenue, S.E.
2ND Floor, W
Washington, DC 20590
Telephone: 202 377 - 2320

Task Order Numbering

Task Orders 3101-3199- Program Management Activities
Task Orders 3201-3299- Environmental Activities
Task Orders 3301-3399- Engineering and Design Tasks
Task Orders 3401-3499- Construction
Task Orders 3501-3599- Security Work
Task Orders 3601-3699- Port Planning and Market Niche Studies

3. Revise/Update Contract Section H, Special Contract Requirements, Key Personnel as follows:

President and Chief Operating Officer: Carl Williams
Principal in Charge: Diana Carlson
PIEP Program Manager: Lyn Dokoozian, PE
Program Manager (Prime Contract/Administration): Constance Black
Deputy Program Manager: Elaine Test
Deputy Program Manager: Scott Yancey
Project Technical Advisor: Brett Flint, PE

4. Revise/Update Contract Section H, Special Contract Requirements, Rights in Data, FAR 52.227-14, Rights in Data-General (Jun 1987), to FAR 52.227-14, Rights in Data-General (DEC 2007).

5. Revise/Update Contract Section I, Contract Clauses Incorporated by Reference as follows:

Correct FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997) to read FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997) Alternate I (Jul 1995)

Delete FAR 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004)

Delete FAR 52.241-02 Order of Precedence-Utilities Feb 1995

Delete FAR 52.241-04 Change in Class of Service Feb 1995

Delete FAR 52.241-05 Contractor's Facilities Feb 1995

Delete FAR 52.241-06 Service Provisions Feb 1995

Delete FAR 52.241-11 Multiple Service Locations Feb 1995

Correct TAR 1252.223-71 Accident and Fire Reporting (May 2005), to read TAR 1252.223-71 Accident and Fire Reporting (Apr 2005)

Correct TAR 1252.237-70 - Qualifications of Contractor Employees (May 2005,) to read TAR 1252.237-70 - Qualifications of Contractor Employees (Apr 2005)

6. Revise/Update Contract Section I, Contract Clauses as follows:

Replace TAR 1252.216-71 Determination of Award Fee (October 1994) with TAR 1252.216-71 Determination of Award Fee (APR 2005). The amount of award is at the sole discretion of the Government but any self-evaluation received within the days after the end of the current evaluation period as specified in the award term plan will be given such consideration, as may be deemed appropriate by the Government.

Replace TAR 1252.216-72 Performance Evaluation Plan, (October 1984) with TAR 1252.216-72 Performance Evaluation Plan (Apr 2005), Notification of such changes shall be provided to the contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

Replace TAR 1252.216-73 Distribution of Award Fee (October 1994) with TAR 1252.216-73 Distribution of Award Fee (APR 2005) Will be in accordance with the Award Fee Plan.

7. Pursuant to Executive Order 13513, October 1, 2009 and DOT Order 3902.10, December 30, 2009 titled "Text Messaging While Driving" new clause H.2 titled "CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING" is added.

8. Contract Attachment J-2, is revised /updated as follows:

Part 4, is changed to read as follows:

In addition to the following review thresholds, MARAD requires all specifications valued at \$100,000 or more, and any modification thereto must be submitted for review, and accepted prior to competitive solicitation. Specifications submitted for review must clearly demonstrate that Port of Anchorage authorized personnel have reviewed and accepted the specification. In no instance shall the Contractor allow work to begin without MARAD acceptance of the specification or addendum, unless it is an emergency, or the requirement is specifically waived by the PCO for a mission essential task.

If changes occur to a specification between the time of review and prior to award of a subcontract that causes the total specification to exceed \$100,000, MARAD must accept the changes before the issuance of an addendum to a solicitation or award of a subcontract, as applicable.

Notwithstanding the above, MARAD may conduct a review of any specifications prior to solicitation and/or award of a subcontract.

Concurrence by the Port in and acceptance by MARAD of the use of a registered professional engineer's drawing, specification, or document means the Port and MARAD have concurred that the drawing, specification, or document is appropriate within the scope of work, not a determination of correctness or reliability of the drawing, specification, or document, nor an assumption of the professional responsibility for said drawing, specification, or document.

Acceptance or rejection of specifications will be issued by the PCO.

Part 5.3, is changed to read as follows:

The requirement for Bonds; Liquidated damages; Progress payments and Insurance will be reviewed on an individual basis for each solicitation

Part 6.6 is deleted in its entirety.

Part 6.4 is changed to read as follows:

Each subcontract shall be sequentially numbered for ease of tracking and control per section G. Each subcontract shall be identified as a requirement for a specific task order and logged accordingly for audit purposes.

Subpart 8.1.1 is changed to read as follows:

There are two parts to this Appendix. One applies to purchases determined by the PCO to be a commercial item and those that apply when the purchase is

determined not to be a commercial item. If the item is determined not to be a commercial item, MARAD will note this on the TO.

J-2, Appendix 1(b), is updated to include the following FAR clauses by full text.

52.203-8 Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity (Jan 1997)

52.215-10 Price Reduction for Defective Cost or Pricing Data (Oct 1997)

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (Jul 2005)

52.222-6 Davis Bacon Act (Jul 2005)

52.222-7 Withholding of Funds (Feb 1988)

52.222-8 Payrolls and Basic Records (Feb 1988)

52.222-9 Apprentices and Trainees (Jul 2005)

52.222-10 Compliance with Copeland Act Requirements (Feb 1988)

52.222-11 Subcontract (Labor Standards) (Jul 2005)

52.222-12 Contract Termination – Disbarment (Feb 1988)

52.222-13 Compliance with Davis Bacon and Related Act Regulations (Feb 1988)

52.222-14 Disputes Concerning Labor Standards (Feb 1988)

52.222-15 Certification of Eligibility (Feb 1988)

52.222-21 Prohibition of Segregated Facilities (Feb 1999)

52.222-27 Affirmative Action Compliance Requirements (Feb 1999)

52.223-14 Toxic Chemical Release Reporting (Aug 2003)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)

52.236-13 Accident Prevention (Nov 1991)

52.237-2 Protection of Government Buildings, Equipment and Vegetation (Apr 1994)

9. New attachment J-3, Award Term Plan, is hereby incorporated.

ATTACHMENT J-2

Purchasing Policies for Subcontracting Contracts with
the Maritime Administration

- Part 1 Purpose
- Part 2 Definitions of Words and Terms
- Part 3 Contractor Purchasing System Review and Approval
Process
- Part 4 Subcontract Review and Approval
- Part 5 Subcontract Requirements
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PART 1**PURPOSE****1.1 Purpose of Instruction**

The purpose of these Subcontract Procedures is to provide guidance, in conjunction with Federal Acquisition Regulation (FAR) Part 44, "Subcontracting Policies and Procedures", in the establishment of guidelines and objectives for granting the Contractor consent to subcontract, and the review and approval of a purchasing system.

1.2 Authority

This instruction will be used as noted in the contract, when MARAD authorizes a Contractor via a Task Order to obtain the work as a subcontract; i.e., purchase supplies and/or services as a prime contractor, rather than as an Agent of the Government.

This instruction cites the minimum standards to which the Contractor purchasing practices must conform. The CONTRACTOR contract further identifies the quality standards for CONTRACTOR purchasing practices under FAR, Part 44.

1.3 Changes to this Instruction

All changes to this instruction shall be issued by MARAD Headquarters Office of Acquisition, MAR 380.

1.4 Additional CONTRACTOR Contract Requirements

It is MARAD's intent to authorize Contractor's to purchase supplies and services in accordance with its best practices for its commercial customers. However, this CONTRACTOR contract expends taxpayer's money, in a program that supports the defense of our Country. Therefore, MARAD reserves the right to require additional program management, such as planning and scheduling or additional subcontract administration which may be outside the scope of the Contractor's usual commercial practices. This program management will be detailed in applicable TOs as necessary MARAD will select the level of program management required, based on the cost and complexity of the task involved. TOs will define the reimbursable aspects of such additional project management.

PART 2**DEFINITION OF WORDS AND TERMS****2.1 Definitions**

Throughout this instruction, the following words and terms are used as defined here unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section or portion of the contract.

CONTRACTOR Contract A contract through which MARAD acquires management expertise, personnel, operational, and technical support and supplies to manage the Port of Anchorage expansion project.

Contract Office Functional area within MARAD with a specified mission for procurement support.

Contracting Officer (CO) The warranted representative of the Government who is authorized to execute, modify, and enforce contracts.

Procuring Contracting Officer (PCO) That individual with the authority to issue the solicitation, negotiate, award and administer CONTRACTOR Contracts. The PCO shall delegate specific duties to the ACO, in writing, at time of award. Such delegation shall be distributed to Prime Contractors at notice to proceed. Without additional, specific written authority, only the PCO may modify the basic terms and conditions of a CONTRACTOR Contract. The PCO may perform all the duties of the PCO.

Administrative Contracting Officer (ACO) A warranted CO in the Regional Contracting Office authorized by the ACO to enforce and administer contracts, within specific guidelines set by MARAD.

Contracting Officer's Technical Representative (COTR) An official acting with oversight from MARAD Office for PORT Intermodal and Environmental Activities is responsible for the programmatic aspects of the CONTRACTOR Contract. His/her duties are twofold: (1) responsibility to the PCO/ACO to oversee and monitor the Prime Contractors technical duties, to ensure technical and programmatic action to the PCO/ACO whenever these requirements are not achieved; and (2) responsibility to the program management organization for the execution of assigned TASK.

Assistant COTR Assists the Contracting Officer's Technical Representative. This position is delegated specific authority and responsibility by the CO or PCO.

Contractor Purchasing System Review (CPSR) An evaluation of the CONTRACTOR purchasing system for material and services, subcontracting, and management of subcontractors from development of the requirement through the completion of subcontract performance (FAR 44.101).

Commercial Item Any item, other than real property, customarily used for non-Governmental purposes that has been or is offered for sale, lease, or license to the general public. Also, any installation, maintenance, repair, training, and other service offered and sold to the general public competitively in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. MARAD will define on Task Orders.

PART 3**CONTRACTOR PURCHASING SYSTEM REVIEW and APPROVAL PROCESS (CPSR)****3.1 CPSR Approval - General**

3.1.1 The review and approval of a CONTRACTOR purchasing system will take place in two steps. First, is the approval of the Contractor's written purchasing procedures. Second, is the approval of the actual operation of the system.

3.2 Purchasing Systems Procedures Requirements

3.2.1 The CONTRACTOR purchasing system shall include "best value" practices and procedures. In a "best value" practice, all aspects of project's requirements and subcontractor's capabilities must be considered. In so doing, such enhanced performance factors as need to substitute response may outweigh low price alone. The CONTRACTOR procedures shall be well defined and consistently applied and shall follow purchasing practices appropriate for the requirement and the dollar value of the purchase. The CONTRACTOR system shall provide appropriate measures to ensure the following:

3.2.1 Acquisition of quality products and services at fair and reasonable prices.

3.2.2 Use of capable and reliable contractors who have successful past performance records and who can demonstrate a current ability to perform.

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

3.2.4 Use of effective competitive techniques. This contract requires that subcontractors be selected on a competitive basis to the maximum extent practical. Accordingly, Prime Contractor is to solicit as many qualified firms as practicable, consistent with the Prime Contractor's written commercial procedures. Prime Contractors will not be directed by MARAD to exclude or remove any subcontractor they might otherwise solicit under their procedures.

3.2.5 Maintenance of highest ethical and professional standards.

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

3.2.7 Maintain a single file for each acquisition, which documents the complete purchase.

3.2.8 Provision to update flowdown clauses.

3.3 Written Procedures Acceptance Process

3.3.1 Within 90 days of contract notice to proceed, The Prime CONTRACTOR is required to submit their written purchasing procedures to the MARAD PCO

3.3.2 Upon receipt of the procedures, (which must include supplies, services,) MARAD shall forward the procedures to the Defense Contract Audit Agency (DCAA) for review. DCAA shall recommend acceptance or note the deficiencies found, and recommend additions or corrections as necessary to meet acceptance.

3.4 Purchasing System Approval Process

3.4.1 After a sufficient quantity of purchases have been processed under the accepted procedures to provide a sample base, an on-site review of files will be done to validate that the accepted procedures are being implemented. This review shall be conducted by the PCO/DCAA.

3.4.2 Upon completion of the on-site review, the PCO/AUDITORS shall determine if should be granted, or define what deficiencies were found, and recommend the necessary steps the CONTRACTOR must take to gain approval. If needed, a second on-site review may be conducted, however, consistent failure by the CONTRACTOR to follow their accepted procedures will be considered poor performance and subject to procedures of Technical Exhibit 2, Performance Requirements.

3.4.3 During the submittal and approval process, the CONTRACTOR shall continue performance as required by the contract. However, until a CPSR approval is granted, subcontracting thresholds of review will be set by the PCO at a level which protects the Government from a possible lack of appropriate controls in the CONTRACTOR system. Section 4 sets out those thresholds.

3.4.4 While in this process, undue delay in correcting deficiencies or responding to MARAD's requests will be considered a lack of performance.

3.5 Continuing Reviews of Contractor Purchasing System

3.5.1 The PCO will conduct a random check of the Contractor's implementation of their process on a yearly basis.

3.5.2 A complete review of the CONTRACTOR Purchasing System shall be completed a minimum of every three (3) years by the PCO/auditor in accordance with FAR Part 44. Provided the review results are satisfactory, the MARAD PCO will provide the CONTRACTOR with a recertification. Assessment of the need for more frequent reviews will be made on an annual basis by the PCO/auditor.

3.6 Withdrawal of CONTRACTOR Purchasing System Approval

3.6.1 If the PCO finds the CONTRACTOR performance under its approved system to be unsatisfactory, the PCO has the authority to require more stringent consent criteria, by lowering the thresholds for MARAD's review. Such decision shall be accompanied by a Deficiency Report to the firm. This is a citation of lack of quality performance. The CONTRACTOR shall respond with a resolution of the deficiency, in the time set by the PCO, but not later than 10 business days. The CONTRACTOR shall adhere to the consent criteria during the resolution of the deficiency.

3.6.2 Only the PCO may withdraw MARAD's approval of a system. Appeals to the decision to withdraw MARAD's approval may be made to the Director, Office of Acquisition. However, until the final decision is made, compliance with the PCO determination is required.

PART 4**SUBCONTRACT REVIEW AND APPROVAL:**

In addition to the following review thresholds, MARAD requires all specifications valued at \$100,000 or more, and any modification thereto must be submitted for review, and accepted prior to competitive solicitation. Specifications submitted for review must clearly demonstrate that Port of Anchorage authorized personnel have reviewed and accepted the specification. In no instance shall the Contractor allow work to begin without MARAD acceptance of the specification or addendum, unless it is an emergency, or the requirement is specifically waived by the PCO for a mission essential task.

If changes occur to a specification between the time of review and prior to award of a subcontract that causes the total specification to exceed \$100,000, MARAD must accept the changes before the issuance of an addendum to a solicitation or award of a subcontract, as applicable.

Notwithstanding the above, MARAD may conduct a review of any specifications prior to solicitation and/or award of a subcontract.

Concurrence by the Port in and acceptance by MARAD of the use of a registered professional engineer's drawing, specification, or document means the Port and MARAD have concurred that the drawing, specification, or document is appropriate within the scope of work, not a determination of correctness or reliability of the drawing, specification, or document, nor an assumption of the professional responsibility for said drawing, specification, or document.

Acceptance or rejection of specifications will be issued by the PCO.

4.1 Subcontract Review by MARAD - CONTRACTOR with an Approved CPSR

\$0 - \$500K All subcontracts that are **not fixed price or not a commercial item:** copy to PCO upon award.

\$200K - \$2M All fixed priced subcontracts - copy to the PCO upon award.

4.1.2 Formal Consent Required with an approved CPSR:

Over \$500K For all subcontracts that are **not fixed price not a commercial item,** consent to subcontract is required prior to purchase.

Over \$2 M All subcontracts, prior to purchase, consent to subcontract required by PCO.

4.2 Subcontract Review - CONTRACTOR without an Approved CPSR

Until such time that the CONTRACTOR has an approved purchasing system, the CONTRACTOR shall submit documentation as follows:

\$0 - \$50K All subcontracts other than fixed price -copy to PCO upon award with periodic review at CONTRACTOR facility via CPSR audit, (at least annually) by MARAD.

\$50K & Above All subcontracts, submit a copy to PCO before award

4.2.1. Formal Consent Thresholds - CONTRACTOR Without an Approved CPSR

over \$50,000 Other than fixed price subcontracts or non-commercial items, all require consent by PCO prior to award.

Over \$100K All fixed price subcontracts - consent to subcontract by PCO is required prior to award.

4.3 Request for Consent to Subcontract

In accordance with FAR Part 44, a request for consent to subcontract shall demonstrate to the PCO that:

4.3.1 Selection of the particular supplies, equipment, or services is technically justified.

4.3.2 Type of contract is appropriate to the risks involved.

4.3.3 Basis for determination of liquidated damages or bonding is being considered.

4.3.4 Compliance with the requirements of the flowdown clauses is evident.

4.3.5 Adequate competition obtained or its absence is properly justified.

4.3.6 Adequate cost or price analysis or price comparisons were conducted.

4.3.7 Basis for determining responsibility of the subcontractor is shown.

4.3.8 Subcontractor is not on debarred, suspended and ineligible contractor's list. The Contractor may review this list by visiting <http://epls.arnet.gov/>

4.4 Flowdown Clauses

4.4.1 Flowdown clauses; vary with the type of item, price and place of purchase. It is the CONTRACTOR responsibility to select and apply the correct clauses to avoid unnecessary costs to the Government.

4.4.2 The Task Order will state if the task is not a commercial item purchase. See Section 9 and Appendix 1(a) for appropriate clauses under each scenario.

4.5 Preaward Review of Subcontracts

Notwithstanding the thresholds stated here, the PCO may request a preaward review of any specific subcontract. All subcontracts valued at greater than \$2,000,000 shall be reviewed by the PCO prior to award.

PART 5

SUBCONTRACT REQUIREMENTS

5.1 Subcontract File Documentation

The CONTRACTOR shall establish and maintain a file, which documents each subcontract. This documentation shall provide evidence that:

5.1.1 Quality products and services are being acquired at fair and reasonable prices.

5.1.2 File documentation is maintained appropriate to the price of the purchase and is adequate to establish the propriety of the transaction and the price paid. Appropriate closeout documentation shall be included showing receipt, acceptance and final payment.

5.1.3 Documentation supporting receipt of appropriate approvals and funding.

5.1.4 For purchases in excess of \$3,000: Competition has been sought, (or reasons why it was not), and the potential sources have demonstrated successful past performance and demonstrate ability to perform current requirement.

5.1.5 Mandatory FAR and MARAD flowdown clauses have been incorporated appropriately.

5.1.6 Evaluation and justification of awards has been conducted in the case of other than low offer, for purchases exceeding \$3,000.

5.1.7 Reporting of the small business/small disadvantaged business award.

5.1.8 Subcontractor performance evaluations were conducted to establish qualified sources, as required by the CONTRACTOR Contract.

5.2 Limitations

5.2.1 The contractor shall not purchase any item or service, which is expressly prohibited by the written direction of MARAD. Except as noted here in Part 8, Emergency, CONTRACTOR shall only purchase items or services authorized by a written task order, duly executed by a MARAD Contracting Officer.

5.2.2 The CONTRACTOR shall use such special and directed sources as may be expressly required by the MARAD contracting officer, or required in other sections of the contract.

5.2.3 The determination to include certain terms and conditions in a CONTRACTOR subcontract will increase costs to the Government; therefore, MARAD reserves the rights to reject terms and conditions of a subcontract that are not considered in the best interest of the Government.

5.3. Subcontract Terms Requiring MARAD Review

The requirement for Bonds; Liquidated damages; Progress payments and Insurance will be reviewed on an individual basis for each solicitation

5.3.1 The CONTRACTOR is not prohibited from requiring the items listed hereunder, as appropriate, pursuant to their procurement practices. However, since these items will reflect a cost incurred by MARAD, or a risk to Government property, these items must be approved by the PCO in advance of the release of the CONTRACTOR solicitation.

- o. Bonds - Payment and Performance - must be separately priced from tasks.
- o. Liquidated damages
- o. Progress payment terms - in no event will advanced payment be considered.
- o. Insurance

5.3.2 MARAD understands these items are valid in some instances. However, they should not be used as a routine matter, but examined for effectiveness on each subcontract.

5.4 Insurance

5.4.1 The CONTRACTOR shall require insurance from a vendor to protect Government property, in an amount appropriate to the subcontract, and approved by the PCO.

5.4.2 The CONTRACTOR shall insure that indemnification extends to MARAD, and the insurance certificate shall name MARAD as a secondary source certificate holder as owner.

5.4.3 The CONTRACTOR shall review and approve or reject subcontractor certificates of insurance. The PCO may request the CONTRACTOR send the subcontractor insurance to the MARAD Division of Marine Insurance for review.

PART 6**SUBCONTRACT PROCEDURES****6.1 Authority to Purchase**

A duly approved TO, issued by MARAD for the CONTRACTOR to perform work as a prime contractor, shall be the authority to purchase and consent to subcontract (provided consent to subcontract was requested in the PTO). The aggregate amount of the subcontracts issued under the TO, may not exceed the funding on the TO. The task order funding may be adjusted by MARAD.

6.2 Application

These procedures will apply to the purchase of supplies and services required to fill the cost reimbursable requirements of the CONTRACTOR Contracts. The intention is for the CONTRACTOR to act as a prime contractor issuing subcontracts, not as an Agent of MARAD.

6.3 Subcontracts

The CONTRACTOR shall issue subcontracts, which shall contain as a minimum the following:

- 6.3.1 Date of order
- 6.3.2 TO number and contract number
- 6.3.3 Description of supply/service
- 6.3.4 Delivery/performance date
- 6.3.5 Place of delivery/performance
- 6.3.6 Packing or shipping instructions, if any
- 6.3.7 Address to submit invoices.

6.4 Subcontract Numbering

Each subcontract shall be sequentially numbered for ease of tracking and control per section G. Each subcontract shall be identified as a requirement for a specific task order and logged accordingly for audit purposes.

6.5 Subcontract Signature

Resulting subcontracts are contracts between the CONTRACTOR and the vendor. MARAD is not a participant in the contract document. Therefore, signatures shall only reflect the Prime Contractor. Do not sign "as Agent" or "Prime Contractor" for MARAD.

6.6 Reporting Requirements

6.6.1. In order to determine the extent of participation by small, small disadvantaged and women-owned businesses in Government contracts, the CONTRACTOR is required to report to the PCO using the Government's eSRS, Electronic Subcontract Reporting System, found at: <http://www.esrs.gov/>.

6.7 Forms

The CONTRACTOR shall only use forms, which are accepted under the CPSR under their commercial practices. Revisions shall be submitted to the PCO for review and approval; however these forms must show verification that funds are available. MARAD should not require additional regional unique forms.

6.8 Distribution

In addition to making distribution of the subcontracts in accordance with Contractor's procurement procedures, if requested, the CONTRACTOR shall provide one copy of each subcontract in its entirety to the PCO and COTR.

PART 7

SUBCONTRACT ADMINISTRATION

7.1 Invoices Received from Vendors

Review and processing of subcontractor invoices shall be in accordance with the highest standards the CONTRACTOR use for their own commercial purchases. Following the CONTRACTOR receipt and acceptance of supplies or services and a proper invoice from the subcontractor, payment shall be made by the CONTRACTOR pursuant to the subcontract terms and conditions. Although the Prompt Payment Act does not apply to subcontractors, the CONTRACTOR is expected to pay subcontractor in accordance with the terms and conditions of the subcontract.

7.2 Invoices Submitted to MARAD - also see Section G of the Contract

7.2.1 Documentation to accompany invoices is as stated in Section G of this Contract.

7.2.2 Prompt Payment Act applies to MARAD's processing of all proper invoices.

7.2.3 Under cost reimbursable contracts, CONTRACTOR may invoice MARAD when they have received and accepted the supply or service, and have booked the cost to their accounting system.

7.3 Subcontractor Performance

7.3.1 MARAD is required to evaluate CONTRACTOR past performance in considering awards of future work.

7.3.2 CONTRACTOR is expected to factor subcontractor past performance into their decisions for award. CONTRACTOR must be prepared to support decisions not to award based on past performance.

7.3.3 MARAD has the right to share its knowledge of poor subcontractor performance.

7.4 Modifications

7.4.1 Modifications to the CONTRACTOR subcontracts that increase costs above the funding on the TO, or significantly change the specification, must be approved by the MARAD CO.

7.5 Disputes

In the event of a disagreement, MARAD endorses the use of alternative disputes resolution procedures. It is expected that all disagreements between the CONTRACTOR and the subcontractor shall be settled between the parties without the involvement of MARAD. MARAD shall be advised of all such disputes, of all changes in the status of such disputes, of potential added costs or delays in delivery and of possible litigation.

7.6 Claims

If a dispute is not settled between the CONTRACTOR and the subcontractor, and the matter advances to a formal claim in the Courts, the CONTRACTOR shall inform MARAD accordingly.

PART 8

INDEX TO APPENDIX

8.1 Mandatory Flowdown Clauses and Prescriptions (Appendix 1)

8.1.1 There are two parts to this Appendix. One applies to purchases determined by the PCO to be a commercial item and those that apply when the purchase is determined not to be a commercial item. If the item is determined not to be a commercial item, MARAD will note this on the TO.

8.1.2 Commercial Item Purchase: (Appendix 1(a))

In accordance with FAR 44.403, all commercial item purchases shall include the clauses listed in 52.244-6; Subcontracts for Commercial Items (March 2007) except for subcontracts obtained outside the U.S.

8.1.2.1 In accordance with the final rule issued by the Cost Accounting Standards Board in 62 Fed. Reg. 31294, June 6, 1997, Cost Accounting Standards do not apply to commercial item buys.

8.1.3 Not a Commercial Item: (Appendix 1(b))

Purchases for supplies and services that do not qualify as commercial items (as determined by the MARAD PCO on the TO) shall include all appropriate clauses from Appendix 1(b) that flowdown from the CONTRACTOR Contract. Seldom do all of these clauses apply to a particular subcontract. It is the CONTRACTOR responsibility to analyze the prescription given, and select only those clauses which apply in each particular circumstance. Unnecessary requirements may inflate costs.

8.2 Contractor's Written Purchasing Procedures Checklist (Appendix 2)

Checklist that DCAA/MARAD will use to review and accept/reject a contractor's procedures for subcontracting for supplies and services.

APPENDIX 1 (a)

COMMERCIAL ITEM PURCHASING FLOWDOWN CLAUSES

52.244-6 Subcontracts for Commercial Items.(MAR 2007)

a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.219-8](#), 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.

(ii) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) [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\(a\)](#));

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

(v) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flowdown as required in accordance with paragraph (g) of FAR clause [52.222-39](#)).

(vi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. App. 1241](#) and [10 U.S.C. 2631](#)) (flowdown required in accordance with paragraph (d) of FAR clause [52.247-64](#)).

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

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

APPENDIX 1(b)

NON COMMERCIAL ITEM FLOWDOWN CLAUSES

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JULY 1995)

1. The substance of the clause is required to be included in subcontracts. See below applicable flowdown language contained in the clause.

2. Clause paragraph (c)(5): "The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract."

FAR 52.203-8 -- Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (Jan 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which --

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes

a violation of subsection 27(a) or (b) of the Act for the purpose of either --

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at [2 U.S.C. 1602\(8\)](#). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds 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, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the

offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty*. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by [31 U.S.C. 1352](#). Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

1. The certification required in all subcontracts that exceed \$100,000. See below applicable flowdown language contained in the clause.
2. Clause paragraph (c)(3): (e) *Penalties*. (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) 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.

FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Dec 2008)

1. The following flowdown language is contained in the clause.
2. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days. (2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

FAR 52.203-14 Display of Hotline Poster(s) (DEC 2007)

1. The following flowdown language is contained in the clause. 2. Clause paragraph (d): *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract— (1) Is for the acquisition of a commercial item; or (2) Is performed entirely outside the United States.

FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996)

1. The clause is required in all subcontracts involving access to classified information. See below applicable flowdown language contained in the clause.
2. Clause paragraph (d): (d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)

1. Required in first-tier subcontracts if the subcontract exceeds \$30,000. See below applicable flowdown language contained in the clause.
2. Clause paragraph (b): The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUN 1999)

1. The clause is required in all subcontracts that exceed \$100,000 and the clause should only be altered as necessary to identify the contracting parties. See below applicable flowdown language contained in the clause.
2. Clause paragraph (g): "The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these; (2) For which cost or pricing data are required; or (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract."

FAR 52.215-10 -- Price Reduction for Defective Cost or Pricing Data. (Oct 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because --

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which --

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)

(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)

(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if

--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid --

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (Oct 1997)

1. Required in all subcontracts that exceeds \$650,000 where cost and pricing data is requested as part of the subcontracting process. Cost and pricing is not required if price is based on competitive pricing and cost and pricing

data is not requested. See below applicable flowdown language contained in the clause.

2a. Clause paragraph (b): "The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification. "

2b. Clause paragraph (c): "In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into, the Contractor shall insert either-(1) the substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data-Modifications."

FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-Modifications (Oct 1997)

1. Required to be included in all subcontracts that exceed \$500,000. See below applicable flowdown language contained in the clause.

2a. Clause paragraph (b): "Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data a FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15-403-1 applies."

2b. Clause paragraph (c): "The Contractor shall require the subcontractor to certify in substantially the form prescribed in Subsection 15-406-2 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification."

2c. Clause paragraph (d): "The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of

agreement on price or the date of award, whichever is later."

FAR 52.215-14 INTEGRITY OF UNIT PRICES (Oct 1997)

1. The substance of the clause is required to be included in all subcontracts. See below applicable flowdown language contained in the clause.
2. Clause paragraph (c): the Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts."

FAR 52.215-15 PENSION ADJUSTMENT AND ASSET REVERSIONS (OCT 2004)

1. The substance of the clause is required in all subcontracts for which certified cost or pricing data will be required and for which any sum of the pension plans costs allocations to all non-CAS-covered contracts and subcontracts will be subject to FAR Subpart 31.2. See below applicable flowdown language contained in the clause.
2. The last sentence in the clause: (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR [15.408\(g\)](#)

FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions. (Jul 2005)

1. See below applicable flowdown language contained in the clause.
2. Clause paragraph (c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

FAR 52 219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (MAY 2004)

1. The clause is required in all subcontracts that exceed \$100,000. See below applicable flowdown language contained in the clause.
2. Clause paragraph (a): It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related

services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)

1. The clause is required in all subcontracts in excess of \$550,000 (or \$1,000,000 for construction of public facility) with large businesses. See below applicable flowdown language contained in the clause.

2. Clause paragraph (d)(9): Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION(JULY 2005)

1. The clause is required in all subcontracts except subcontracts (a) *Overtime requirements*. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation [22.300](#)) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages*. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages*. The Contracting Officer will withhold from payments due

under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

2. Clause paragraph (e) *Subcontracts*. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

FAR 52.222-6 Davis-Bacon Act (Jul 2005)

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job

headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in

the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the

Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

FAR 52.222-7 Withholding of Funds (Feb 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same

Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

FAR 52.222-8 Payrolls and Basic Records (Feb 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall

set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or

subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

FAR 52.222-9 Apprentices and Trainees (Jul 2005)

(a) *Apprentices.*

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed-

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program

shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.*

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the

wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

FAR 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

FAR 52.222-11 Subcontracts (Labor Standards) (Jul 2005)

1. See below applicable flowdown language contained in the clause. 2. Clause paragraph (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

FAR 52.222-12 Contract Termination - Debarment (Feb 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

FAR 52.222-14 Disputes Concerning Labor Standards (Feb 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 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.

FAR 52.222-15 Certification of Eligibility (Feb 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)

1. See below applicable flowdown language contained in the clause. 2. Clause paragraph (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (Feb 1999)

(a) *Definitions.* "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means --

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor

is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor

by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by --

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news

- media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary changing or sleeping areas shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor --

- (1) Actively participates in the group;
- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 - (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
 - (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
 - (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to --

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

1. The clause is required to be included in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246. See below applicable flowdown language contained in the clause.

2. Clause paragraph (b)(10): The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order 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 or vendor.

FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED, VIETNAM ERA VETERANS AND OTHER ELIGIBLE VETERANS (SEPT 2006)

1. The clause is required in every subcontract or purchase order of \$100,000 or more unless exempted by rules, regulations or orders of the Secretary of Labor. See below applicable flowdown language contained in the clause.
2. Clause paragraph (g): *Subcontracts*. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

1. The clause is required in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary of Labor. See below applicable flowdown language contained in the clause.
2. Clause paragraph (d): *Subcontracts*. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance

FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (SEPT 2006)

1. The clause is required in every subcontract or purchase order of \$100,000 or more unless exempted by rules, regulations, or order of the Secretary of Labor. See below applicable flowdown language contained in the clause.
2. Clause paragraph (f): The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor

FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007)

1. The clause is required in all service subcontracts that exceed \$2,500. See below applicable flowdown language contained in the clause. See FAR part 37 for definitions of service type contracts.

2. Clause paragraph (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.

52.222-54 Employment Eligibility Verification (Jan 2009)

1. The following flowdown language is contained in the clause. 2. Clause paragraph (e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

FAR 52.223-14 Toxic Chemical Release Reporting (Aug 2003)

1. See below applicable flowdown language contained in the clause. 2. Clause paragraph (e)(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

FAR 52.225-1 Buy American Act—Supplies (DEC 2007)

(a) *Definitions*. As used in this clause—

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component,

including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) The Buy American Act ([41 U.S.C. 10a - 10d](#)) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

**FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
(FEB 2006)**

1. The clause is required to be included in all subcontracts. See below applicable flowdown language contained in the clause.

2. Clause paragraph (c): The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

FAR 52.227-1 AUTHORIZATION AND CONSENT (JULY 1995)

1. The following flowdown language is contained in the clause.

2. Clause paragraph (b): "The Contractor agrees to include,

and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold does not affect this authorization and consent."

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)

1. The following flowdown language is contained in the clause. 2. Clause paragraph (c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

FAR 52.228-5 INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

1. The substance of the clause is required in all subcontracts where the work will be performed on a Government installation. See below applicable flowdown language contained in the clause.

2. Clause paragraph (c): "The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors proofs of required insurance, and shall make copies available to the Contracting Officer upon request."

FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)

1. The substance of the clause is required to be included in all negotiated subcontracts that exceed \$500,000 where the price negotiated is not based on: (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or (2) Prices set by law or regulation, and expect that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirements to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1. See below applicable flowdown language contained in the clause.

2. Clause paragraph (d): The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractors signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on-(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or (2) Prices set by law or regulation, and expect that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirements to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)

1. The substance of the clause, expect paragraph (b) of the clause is required in all negotiated subcontracts when the contract amount is over \$500,000, but less than \$10 million, and the offeror certified it is eligible for and elects to use modified CAS coverage, unless the clause prescribed in paragraph (c) of 30.201-4 is used. See below applicable flowdown language contained in clause.

2. Clause paragraph (d): "The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, expect paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that-(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, Subpart 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230-2, shall be inserted in lieu of this clause; or (2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on-(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or (ii) Price set by law or regulations; or (3) The

requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, 9903.201-1.

FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005)

1. The clause is required to be included in all subcontracts subject to either the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause.

See below applicable flowdown language contained in the clause. 2. Clause paragraph (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

FAR 52.236-13 Accident Prevention (Nov 1991)

1. The following flowdown language is contained in the clause. 2. Clause paragraph (e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or

replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

FAR 52.246-25 LIMITATION OF LIABILITY-SERVICES (FEB 1997)

1. The clause, modified to reflect the relationship of the contracting parties, is required in all subcontracts that exceed the simplified acquisition threshold.

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

1. The substance of the clause is required in all subcontracts or purchase orders that involve international air transportation. See below applicable flowdown language contained in the clause. 2. Clause paragraph e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

FAR 52.248-1 VALUE ENGINEERING (FEB 2000)

1. The clause is required to be included in any subcontract of \$100,000 or more where value engineering may be appropriate. 2. Clause paragraph (1): "Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value...."

APPENDIX 2

CHECKLIST FOR WRITTEN PURCHASING PROCEDURES

RATINGS:

X = MISSING I = INADEQUATE O = ACCEPTABLE N = NOT APPLICABLE

Section 1 POLICY AND PROCEDURES

1.1 Purpose of purchasing manual and department

_____ Manual sets forth a short narrative of the purchasing manual and department purpose and objectives

1.2. Ethics.

- _____ Purchasing policy on Ethics
- _____ Established Code of Ethics and Standards of Conduct
- _____ Procurement Integrity policy and procedures for purchases under Government contracts.

1.3 Purchasing /Engineering department organization

- _____ The manual contains an organization chart and/or narrative statement of the corporation.
- _____ The manual contains a detailed chart and/or narrative statement of the purchasing functions and include those functions that may be assigned outside the purchasing department.
- _____ Shows clear lines of responsibility and authority.
- _____ Defines responsibility between departments.
- _____ Standards for hiring and training are formal and adequate.

1.4. Interdivisional transactions

_____ Policy and procedures in processing transactions with affiliates, subsidiaries, or other divisions of the company.

Section 2 REQUISITION OR REQUEST TO PURCHASE

2.1 Purchase Request/Requisition processing/procedures

- Procedures for processing requisition.
- Are these procedures the same for all dollar values and items purchased?
- Order preparation procedure
- Procedures for issuance of offers/orders by staff other than purchasing department

2.2 Emergency Requisitions

- Procedures for emergency requests
- Procedures to verify funds availability

SECTION 3 PRE AWARD

3.1 Government requirements and certifications

- Procedures for identifying appropriate flowdown clauses and certifications in Gov't contracts.
- Procedures for incorporating:
 - Warranty
 - Insurance
 - Environment Haz Mat control procedures
 - Transfer of Custody
- Policy on advanced notification to subcontract under FAR contracts-"consent"
- Policy on insuring small and small disadvantaged business enterprises are considered fairly as contractors and subcontractors

3.2 Vendor Sources Selection

- Policy statement on selection and sources of supply/services
- Criteria for selection of sources of supply/services
- Maintenance of bid lists
- Relations with suppliers policy and procedures (written and oral communications with suppliers concerning quotes and bids).
- Criteria for the use of bonds

3.3 Receipt of Bids

- Procedures for receipt of bids.
- Procedures for oral vs. written bids.
- Policy on public bid opening.

3.4 Types of Contracting

- ___ Criteria for selection of other than fixed price type:
example, time and material and Not to Exceed orders
- ___ Procedures for other than fixed priced purchases

3.5 Non Competitive Purchase Procedures

- ___ Criteria and approval authority for non-competitive purchases.
- ___ Price reasonableness documentation to support award

3.6 Master pricing agreements (Long term purchase agreements)

- ___ Policy for the use of long term purchase agreements
- ___ Policy and procedures for competing and awarding long terms purchase agreements

3.7 Factors in evaluation and documentation of negotiations

- ___ Provide your negotiation procedures.
- ___ Include evaluation criteria for best value analysis.

SECTION 4 AWARD

4.1 Award___

- ___ Procedure and documentation required for award.
- ___ Controls on issuance - sequential numbering system, approval required?
- ___ Award approval authority including delegations.
- ___ PCO advance approval for consent to award
- ___ Procedures for distribution of award documents

4.2 Administration:

- ___ Procedures for monitoring orders or MARAD subcontract after award.
- ___ Subcontract performance monitoring
- ___ Receipt and acceptance procedures
- ___ Procedures for ordering, tracking and controlling growth on the MARAD subcontract.
- ___ Post award evaluation of subcontractor.
- ___ Claims procedures
- ___ Dispute Resolution Procedures.

4.3 Modifications

_____ Policy and procedures for identifying, preparing, controlling and processing modifications to purchase orders, master pricing agreements and MARAD subcontracts.

_____Dollar thresholds for review and approval.

4.4 Invoicing Review and Processing

_____ Policy and procedures to ensure that invoices are reviewed against items received and terms of contract

4.5 Close-outs

_____Procedures for closeouts - retainage of documents.

**

DETERMINATION OF AWARD FEE

Port of Anchorage Intermodal Expansion Project Prime Contract DTMA1D08012

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1.0 INTRODUCTION

1.1 The purpose of this document is to outline overall strategy, define responsibilities, establish procedures, and identify criteria for determining ICRC's (Contractor) Award Fee under this contract. The contract specifically relates to providing management services for the Port of Anchorage project. This plan also describes contract performance measures and provides an explanation of data sources, methodology, and performance thresholds associated with applicable Award Fees. The items that will be evaluated include:

- (1) Quality of Project Work,
- (2) Cost Control,
- (3) Meeting Project Schedule.

1.2 An Award Fee will be determined semi-annually. The semi-annual rating period for the award fee determination will be from the first day through the last day of each six-month period. The methodology for determination of award fee is contained herein.

1.3 The Contract with Contractor contains provisions for an Award Fee program. The primary objectives of the Award Fee program are: to motivate Contractor to provide products and services that exceed customer requirements and focus Contractor's efforts in desired areas, in accordance with the performance measures.

1.4 Award Fees earned by Contractor shall be awarded by the Fee Determining Official (FDO). Any and all award fees are subject to the availability of funds. Unilateral changes to the metrics or the associated methodology may occur up to thirty (30) days prior to the beginning of an evaluation period. These changes will be implemented by means of a unilateral modification as described in Section 10.1. Any changes to metrics

or methodology within the current period will be accomplished through bilateral agreement.

1.5 The determination of award-fee amounts are unilateral decisions made solely at the discretion of the Government.

1.6 Determination of Contractor's performance and Award Fee eligibility will be based on attainment of the objective and subjective performance measures outlined in Para 1.1 of this plan and further explained below. The method of assessing performance will be limited to Contractor's activities and functions in performance as defined in this contract. Contractor will not be held responsible for failure to achieve performance measurements outlined in the Statement of Work for reasons directly attributable to the Government.

1.7 The Government will assure that Contractor be given the opportunity to understand the basis for the award amount as defined below. Also, the Government will assure fairness of evaluation, and prompt and consistent feedback. This process will form the basis for Award Fee disbursements based on the final FDO determination.

1.8 The maximum award fee possible is 4% of funded estimated costs for Program Management Task Orders and 1.75% for all other Task Orders. The award fee available for a Task Order during an evaluation period will be based on funded estimated costs during the evaluated contract period.

2.0 ORGANIZATION

2.1 The award fee organization consists of the Fee Determining Official (FDO), Award Fee Review Board (AFRB) Chair, AFRB Advisory Members, and the Award Fee Recorder.

3.0 RESPONSIBILITIES

3.1 Fee Determining Official (FDO). The FDO will:

3.1.1 Appoint the AFRB Chair.

3.1.2 Approve the Award Fee Plan.

3.1.3 Approve changes to the Award Fee Plan, and/or associated Award Fee criteria or methodology of determining amount(s) of Award Fee.

3.1.4 Review the recommendations of the AFRB, consider all pertinent data, and determine the earned award fee amount for each evaluation period.

3.2 AFRB Chair. The AFRB Chair will:

3.2.1 Chair the AFRB.

3.2.2 Provide executive-level feedback to Contractor on a regular basis in accordance with the areas of evaluation and criteria in the Award Fee Plan.

3.2.3 Appoint an Award Fee Recorder.

3.2.4 Recommend Award Fee Plan changes to the FDO.

3.2.5 Present the AFRB's recommended rating to the FDO.

3.3 AFRB Advisory Membership.

AFRB Advisory Members are selected as appropriate to provide customer input and subject matter expertise to other AFRB members. The following are the AFRB Advisory Members: Program Manager (PM), the Contracting Officer (CO), Environmental Specialist, a Project Engineer, a Project Marine Transportation Specialist, and the Contracting Officer Technical Representative (COTR) shall act as Chair. Changes to the membership of the AFRB may be made at the discretion of the FDO.

3.4 The AFRB Advisory Members will:

- 3.4.1 Participate in the AFRB meetings and briefings.
- 3.4.2 Review performance reports for submission to the Award Fee Recorder.
- 3.4.3 Review evaluation reports and recommend the rating and Award Fee amount to the AFRB Chair and the FDO.
- 3.4.4 Recommend changes to the Award Fee Plan.
- 3.4.5 Maintain written records of Contractor's performance within their assigned evaluation areas.
- 3.4.6 At their option, request that the Contractor present a formal briefing, including a self-assessment of its performance during the evaluation period.

3.5 The Award Fee Recorder will:

- 3.5.1 Manage all activities associated with the AFRB process.
- 3.5.2 Consolidate assessments and recommendations for presentation to the AFRB and FDO at both the mid-term and final award (semi-annual and annual) fee evaluation periods.
- 3.5.3 Notify AFRB members when and what required reports/briefings are due.
- 3.5.4 Record and distribute minutes of the AFRB meetings.
- 3.5.5 Maintain and update the Award Fee Plan as approved by the FDO.
- 3.5.6 Maintain the official Award Fee files to include internal procedures and other documentation having a bearing on the FDO's decision.
- 3.5.7 Provide Award Fee overview and training for new team members when training is needed.
- 3.5.8 Document and maintain AFRB activities in official files.
- 3.5.9 Perform other duties as assigned by the AFRB Chairperson, including notification and scheduling of any advisory personnel that may be needed by the AFRB.

3.6 The Contracting Officer will:

- 3.6.1 Act as the liaison between the Contractor and Government personnel.
- 3.6.2 Prepare FDO Award Fee determination letter along with a description of Contractor's performance, strengths, weaknesses, improvement areas, and expectations for future performance.

3.6.3 Execute changes to the contract that make changes to the Award Fee Plan, the methodology in which any Award Fee is determined and distributed, or changes to the Award Fee pool available for Award Fee consideration.

3.6.4 Recommend changes to the Award Fee Plan; e.g., Award Fee pool reallocations, and criteria for weighting of performance areas, through the Award Fee Recorder.

3.6.5 Maintain open, honest, and frequent communications between AFRB Members.

4.0 AWARD FEE EVALUATION REQUIREMENTS

The overall goal will be to complete the evaluation process within 45 business days of the end of the period of evaluation. The following procedures will be used in determining the award fee:

4.1 Within fifteen (15) business days following the end of the evaluation period, the AFRB shall convene and prepare a written, semi-annual performance evaluation considering the following information:

- (1) Individual Evaluations received by the AFRB.
- (2) The Contractor may present a formal briefing on its efforts during the period under evaluation to the AFRB within the first ten (10) business days following the end of the evaluation period. This may be done on the Contractor's initiative or at the request of the AFRB Chair. The Maritime Administration will designate a location for the briefing. The Contractor's presentation should include a detailed account of the Contractor's efforts, accomplishments, problems, and recommendations regarding the following:
 - (a) Status of ongoing work;
 - (b) Overview of project schedule and milestones;
 - (c) Status of Task Order and budgeted amounts compared with actual costs;
 - (d) Cost avoidance methodology and accomplishments;
 - (e) Status of Subcontracted work and subcontractor performance; and
 - (f) Any other data that the Contractor considers appropriate.

In the event the Contractor presents a formal briefing, the Contractor will be requested to provide one (1) advance, written copy of its presentation to the AFRB Chair at least five (5) business days prior to the presentation, and four (4) copies at the time of the presentation.

- (3) Any relevant audit reports to include recent ICRC CPSM purchasing system reviews.

4.2 The CO shall provide the Contractor written notification of its performance evaluation within five (5) business days of the FDO's determination.

4.3 Within ten (10) business days of receipt of the performance evaluation, the Contractor may provide written response to the FDO, with a copy to the CO, indicating concurrence or non-concurrence with the performance evaluation. If the Contractor does not concur, the Contractor should indicate any exception thereto. The Contractor may furnish a written description of his performance during the period under consideration. This description shall clearly identify specific evaluation categories, factors, and elements, and include a self-assessment of his performance.

4.4 Within five (5) business days of receipt of the Contractor's response, the FDO shall provide the CO with a final performance evaluation and determination of award fee.

4.5 Within five (5) business days of the Contractor's receipt of the FDO's determination, the Contracting Officer shall issue a unilateral modification to the contract(s) to provide for any earned award fee.

5.0 AWARD FEE POOL AND FEE CALCULATION

5.1 Award Fee Pool: The Maximum Award Fee Pool (MAFP) for work performed under the period-of-performance of this contract is 4.0% for Program Management Task Orders and 1.75% for all other Task Order costs for the evaluation period.

The Maximum Award Fee Pool for the evaluation period will be calculated as follows:

$MAFP = EC (\$) \times MAXIMUM AWARD FEE (\%)$

MAFP = Maximum Award Fee Pool in \$

EC = Estimated Cost at Task Order Award in \$

MAF = Maximum Award Fee in %

The Total Maximum Award Fee Pool will be the sum of the PMO and all other Task Order Maximum Award Fee Pools.

The text above represents the process for developing the Maximum Award Fee Pool the contractor is eligible for based on the Task Order proposed. The actual calculation for the Award Fee available during the period is subject to the funding authorized under the Task Order during the corresponding award fee evaluation term. The Contractor understands that each task order may not be fully funded at award. However, the Maximum Award Fee Pool is reflective of the potential Award Fee dollars available to the Contractor based on performance factors and funding authorized. MARAD shall establish, with input from ICRC, on a Task Order basis, the award fee pool amount for each evaluation period that appropriately pro-rates the available award fee to the evaluation period.

5.2 Award Fee Calculation: In determining the total amount of the first award fee for each evaluation period, consideration will be given to changes in funding availability, site conditions, and project requirements. The Government shall make payment of all or a portion of the maximum award fee semi-annually based upon the performance evaluation point score (P) assigned by the FDO in accordance with the award fee determination plan. All award fees authorized by the Government are discretionary and subject to the availability of funds. The Award Fee Plan does not obligate the Government to offer or make an award fee to Contractor. Calculations are shown below:

Scoring Methodology – The following example illustrates how the evaluation score, “P” will be calculated:

- Quality of Program Management criteria – Total score out of 50 possible points
- Technical/Schedule criteria – Total score out of 25 possible points
- Cost Control criteria – Total score out of 25 possible points

If the Contractor scores 34, 15 and 14.7 respectively in the three areas, the calculation would be:

$$P = 34+15+14.7 = 63.7$$

Assume that the MAFP determined above = \$314,473.48 for 6-month evaluation period

$$TF = P (\%)/100 \times \text{MAFP} (\$)$$

$$TF = (63.7/100) \times (\$314,473.48) = \$200,319.60$$

P = Award Fee Evaluation Score Assigned

MAFP = Maximum Funded Award Fee Pool in \$. This is the validated funded amounts for the evaluation period in question.

TF = Total Award Fee for the evaluation period in \$.

Any adjustments to award fee based on funding constraints will be made at task order close out.

6.0 EVALUATION METHODOLOGY

6.1 If appropriate, the award fee to be paid for each period shall be identified with word descriptions by applying the following adjective ratings and scoring ranges for the combined Technical and Management criteria evaluated by the Performance Evaluation Board.

Scores awarded in this category should be reserved for only that work which displays the highest levels of performance with respect to innovation and methodology.

AREAS	Unsatisfactory	Marginal	Satisfactory	Very Good	Excellent
Program Management	0	.1-20	20.1-30	30.1-40	40.1-50
Technical/Schedule	0	.1-10	10.1-15	15.1-20	20.1-25
Cost Control	0	.1-10	10.1-15	15.1-20	20.1-25

Each subfactor identified in 7.0 will be graded per the table above. To determine the earned points for the qualitative measures, the AFRB Recorder will take the point values for each of the three areas above to calculate an average score for each of the three rating areas (Program Management, Technical/Schedule, and Cost Control). These results will then be presented to the AFRB for development of a final recommendation to the FDO.

The definitions below describe the level of performance that will lead to the rating assessment:

- (a) **Excellent:** Contractor performance exceeds most significant contract requirements, and meets all others. The Government receives tangible or intangible benefits in the form of improved quality, responsiveness, cost economy, increased timeliness, or greatly enhanced effectiveness of operations. There are no recurring problems. Contractual performance was accomplished with few deviations from planned performance, none of which had a negative impact on the overall program.

- (b) **Very Good:** Contractor performance meets or exceeds some significant contract requirements, and meets all others. The Government receives tangible or intangible benefits in the form of improved quality, responsiveness, cost economy, increased timeliness, or enhanced effectiveness of operations. Contractual performance was accomplished with only minor problems, all of which have acceptable corrective action plans in place.
- (c) **Satisfactory:** Contractor performance meets most contract requirements. The Government receives tangible or intangible benefits in the form of improved quality, responsiveness, cost economy, increased timeliness, or effectiveness of operations. Deficiencies exist which could adversely affect performance; however, acceptable corrective action plans are in place
- (d) **Marginal:** Contractor performance meets some contract requirements; however, many areas require improvement. Quality, responsiveness, timeliness, and/or cost economy are lacking and require attention and action. Deficiencies exist which could adversely affect performance; however, program management has put corrective action plans in place
- (e) **Unsatisfactory:** Contractor performance fails to meet contract requirements with a significant adverse impact on program performance. Recovery is not likely in a timely manner without stakeholder intervention or involvement. This reflects serious problems for which the Contractor's management initiatives for corrective action appear to be inadequate or ineffective.

7.0 EVALUATION CRITERIA

7.1 The specific evaluation elements for each evaluated area are stated hereunder. Each evaluation area has been assigned a weight that will be used to assess the overall evaluation rating, arriving at the performance evaluation score.

7.2 Project Management

Maximum 50 points

- (a) The ability of the Contractor to produce project work at quality levels consistent with industry standards and the specifications approved by the Maritime Administration.
- (b) Extent to which the Contractor applies sound program management techniques to demonstrate effective and efficient planning, organizing, implementing, and control to achieve the program cost, schedule, technical, and management objectives. Including management responsiveness to changing operational conditions and requirements.
- (c) The ability of the Contractor to work effectively and cooperatively with all stakeholders of the Port of Anchorage expansion project and members of the public to ensure that minimal impacts are felt by existing tenants, port users and members of the public during the various construction phases of the project.
- (d) The ability of the Contractor to effectively and cooperatively work with federal and state resource agencies to ensure that all permit requirements are being met and that there is effective and clear communication to all agencies concerning the progress on the project and ongoing work.
- (e) The ability of the Contractor to follow contract requirements and implement its Quality Control System.

- (f) The ability of the Contractor to select subcontractors and manage all subcontracted work including subcontract costs, performance, milestones, and quality.
- (g) The ability of the Contractor to make timely submissions of all requests to the Maritime Administration in order to provide sufficient time for Maritime Administration staff to review, consider and make comment on all Contractor submissions. This shall include but not be limited to submission of Task Orders, solicitation reviews, deliverables, designs, and specifications.

7.3 Cost Control

Maximum 25 points

- (a) The ability of the Contractor to effectively report expenditures, measure results, and perform cost projections. Effective use of the cost control system in day to day management of work, including evaluating the impact of variances and implementing corrective action planning.
- (b) The ability of the Contractor to aggressively control and avoid costs by closely monitoring labor burn rates and using cost-effective management and procurement practices. Actual costs that are greater than five (5) percent higher than a Task Order's estimated cost and are within a Contractor's control will negatively affect the score for cost control, excluding scope changes. Costs for subcontracts will be based on those at time of final contract award or final negotiated costs.
- (c) Accuracy of estimates:
- (d) Exceptional: +/- 1 %
- (e) Very Good: +/- 5 %
- (f) Satisfactory: +/- 10%
- (g) Marginal: +/- 15%

7.4 Technical/Schedule

Maximum 25 points

- (a) The ability of the Contractor to meet the critical path elements subject to the availability of funding and changes in site conditions.
- (b) The ability of the Contractor to effectively meet all milestones set forth in approved Task Orders.

8.0 AWARD FEE PERIODS

8.1 The Award Fee period shall consist of semi-annual periods of not less than six (6) months duration. The initial evaluation period will be from contract award through 6/30/2009 and thereafter the period shall consist of semiannual periods of not less than 6 months.

Performance Rating will be conducted in accordance with the schedule below:

Evaluation Period	Dates
1	7/16/08 through 6/30/09
2	7/1/09 through 12/31/09
3	1/1/10 through 6/30/10

- 4 7/10 through 12/31/10
- 5 1/11 through 6/30/11
- 6 7/11 through 12/31/11
- 7 1/12 through 6/30/12
8. 7/12 through 12/31/12
9. 1/13 through 6/30/13
10. 7/13 through 12/31/13
11. 1/14 through 6/30/14

9.0 AWARD FEE PAYMENT

9.1 Any and all award fees authorized by the Government are discretionary and subject to the availability of funds. The amount of award fee available in the pool shall be obligated at the time of the task order or modification award. The Award Fee Plan does not obligate the Government to offer or make an award fee to the Contractor.

9.2 The Contractor may earn and be paid all or a portion of the available award fee or earn none of the award fee. Scores below 63 would not normally result in any award fee. Payment of an award fee, if any, will be made semi-annually. The determination of award fee amount will be based on the overall "grade" for the rating period.

10.0 MODIFICATIONS TO AWARD FEE PLAN

10.1 Changes to the Plan: The Government reserves the right to unilaterally change the existing Award Fee evaluation methodology, areas of emphasis and/or their respective weighting, distribution of remaining Award Fee, individual metrics, and other matters covered in this plan prior to the start of an evaluation period. Unilateral changes to the Award Fee Plan as indicated in Section 6.0 of this Plan shall be incorporated into the prime contract through a unilateral modification process.

10.2 Any factors that are changed as indicated in Section 7.0 of this Plan must continue to be within the Contractor's scope of control. The method of implementation, method of calculating changes to any newly developed factors, and any associated equitable adjustment as the result of changes to this plan, will be subject to agreement between the Parties and accomplished by means of a bilateral modification. The bilateral modification will take effect on the date the modification is issued unless stated otherwise.

10.3 Either the Government or Contractor may propose changes to the Award Fee Plan prior to the next Award Fee evaluation period. Suggested changes not accepted should be briefed to the FDO and rationale for non-acceptance explained. Submittals should be made in time to allow for review, comment, and contract modification, if appropriate.

10.4 Method for Making Changes: Proposed changes will be submitted to the Award Fee Recorder for presentation to the AFRB. Recommended changes to the Award Fee Plan will be coordinated by the AFRB Chair for coordination/approval. Changes will be submitted to the FDO for approval. Once approved, the contracting officer will submit a modification to Contractor to implement the approved changes

10.5 Annual Review. An annual Government and Contractor review of the Performance Measures will be conducted to determine if the performance award process is

accomplishing the desired overall customer support objectives. This review will tentatively be conducted in the end of the Period of Performance of the base contract year and each option year. Any changes to the Performance Measures and/or processes will be accomplished by bilateral modification, through the previously described process.

11.0 NON-WAIVER OF CONTRACT CLAUSES

11.1 Nothing contained in this Award Fee Plan shall be construed to alter, modify, revise, or waive any provision of the clause of this contract entitled "Inspection of Services," or any other clause or provision of this contract.