

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION

COOPERATIVE AGREEMENT

PROJECT NUMBER: DTMA1H04002

TITLE: NATIONAL ACADEMY OF SCIENCES, NATIONAL
RESEARCH COUNCIL, COMMISSION ON
ENGINEERING AND TECHNICAL SYSTEMS,
MARINE BOARD

MAXIMUM TOTAL FIVE
YEAR FEDERAL OBLIGATION: \$1,618,250.00

MAXIMUM TOTAL FIRST
YEAR FEDERAL OBLIGATION: \$323,650.00

CURRENT FEDERAL OBLIGATION: \$100,000.00
(*amount currently available balance is
subject to Availability of Funds (see Article 12)

EFFECTIVE DATE:

FUNDING DATA: SEE ARTICLE 4

RECIPIENT NAME AND
ADDRESS

National Academy of Sciences
Office of Contracts & Grants, Room GR-406
500 5th Street, NW
Washington, D.C. 20001

AGENCY NAME AND
ADDRESS:

DOT/Maritime Administration
Office of Acquisition, MAR-380
400 Seventh Street, SW, Rm. 7310
Washington, DC 20590

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ARTICLE 1 - PARTIES

This COOPERATIVE AGREEMENT (Agreement) is entered into by and between the United States of America represented by the Maritime Administration (MARAD) and the National Academy of Sciences, Transportation Research Board, Marine Board (the Recipient).

ARTICLE 2 - AUTHORITY

MARAD, enters into this Agreement pursuant to the authority in P.L. 95-224 and the Merchant Marine Act of 1936, as amended (Section 101, 46 USC 1101; Section 207, 46 USC 1117 & Section 209 (b) (5), 46 USC 1119)) pertaining to the entry into and performance of cooperative agreements and other transactions with public and private agencies, and the authorizations necessary for research and development activities.

ARTICLE 3 - PURPOSE/INTENT OF PARTIES

WITNESSETH THAT

WHEREAS MARAD wishes to transfer money to the Recipient to accomplish a public purpose of independent evaluations and advice concerning present and future uses of the ocean and its resources and the ability of the nation's marine and maritime industries to operate safely and effectively, described in this Agreement.

WHEREAS Recipient has proposed to perform technical studies which are appropriate to achieve MARAD's support and promotion efforts.

WHEREAS, the Recipient will entail substantial Federal involvement because:

- (a) There is a need to coordinate the work of the Marine Board with that of DOT Administrations and other Federal agencies.
- (b) Federal-Recipient collaboration in research, planning, and problem solving is desirable in areas of Federal technology transfer.
- (c) Federal involvement is desired in the ongoing program where the role of a catalyst or facilitator is required.

THEREFORE, the parties to this document have agreed to enter into this Agreement.

ARTICLE 4 - ACCOUNTING AND APPROPRIATION DATA
69X1750 9 04 210 150000 X00042E 255Q 042100042E-\$100,000

ARTICLE 5 - ROLE OF THE ADMINISTRATIVE AGENCY

The Maritime Administration (MARAD) under the Department of Transportation is acting as the Administrative Agency on this Cooperative Agreement.

The main purpose of the Administrative Agency is to administer the Cooperative Agreement which includes monitoring compliance with the requirements of the Agreement, providing funding as a participating agency, receiving funding documents from other participating agencies, obligating those funds to this Cooperative Agreement, billing the participating agencies for funds provided and tracking receipt of those payments. This cycle is set forth in a flow chart provided as Attachment A to this Agreement.

ARTICLE 6 - CONSIDERATION

The total estimated amount of this project over the full performance period (5 years) is \$1,618,250. Between nine (9) and fourteen (14) federal agencies contribute in varying amounts each year. Calendar year 2004 has an estimated cost of \$308,003. By December 31st of every year, the Cooperative Agreement will be modified to establish the estimated cost for that calendar year, identify which agencies and the respective amounts being contributed, and provide funding.

The agencies and estimated contributing amounts for calendar Year (CY) 2004 are provided as Attachment B to this Agreement.

ARTICLE 7 - ESTIMATED AND ALLOWABLE COSTS--INCREMENTALLY FUNDED COOPERATIVE AGREEMENT

(a) Estimated Costs

(1) It is estimated that the total cost for the full five- year period of performance to the Government will be \$1,618,250, of that, approximately \$308,003. is allocable to Calendar Year 2004.

(2) Total funds currently available for payment and allotted to this agreement are \$100,000. For further provisions on funding, see Article entitled "Limitation of Funds".

(3) It is estimated that the amount currently allotted will cover the performance under the Agreement through

(4) The Agreements/Contracting officer may allot additional funds to the Agreement without the concurrence of the Recipient.

(5) The provisions of the Articles entitled "Limitation of Cost" and "Allowable Cost and Payment" shall apply.

(b) Allowable Costs

(1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with the OMB Circular A-122 "Cost Principles for Non-profit Organizations" in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the Recipient at billing rates established by the appropriate Government Representative in accordance with OMB Circular A-122, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

| CATEGORY | RATE(%) | COST BASE | APPLICABLE PERIOD |
|-----------------|---------|--------------|---------------------|
| Overhead | 63.44% | See note (a) | FY 04 Until Amended |
| Overhead | 15.23% | See note (b) | FY 04 Until Amended |
| G&A | 16.74% | See note (d) | FY 04 Until Amended |
| Fringe Benefits | 33.00% | See note (f) | FY 04 Until Amended |
| Subagreement | 3.09% | See note (c) | FY 04 Until Amended |
| Leave | 15.95% | See note (e) | FY 04 Until Amended |

Distribution Bases:

(a) Direct labor dollars composed of total direct salaries and wages, accrued leave, fringe benefits, consulting fees onsite, temporary personnel onsite, borrowed personnel onsite, and other personal services onsite.

(b) Direct labor dollars composed of total direct salaries and wages, accrued leave, fringe benefits, consulting fees onsite, temporary personnel onsite, borrowed personnel onsite, and other personal services onsite performed at location other than 2001 Wisconsin Avenue, 1055 Thomas Jefferson Street and 1000 Thomas Jefferson Street.

- (c) Subagreements, associateship/fellowship expenses, dues to international organizations, and direct charged equipment.
- (d) Direct labor dollars, other direct costs (except for subagreements, associateship/fellowship expenses, dues to international organizations, and direct charged equipment), and applied overhead.
- (e) Gross salaries and wages, less; spending account, overtime premium, annual leave, salary continuation, holiday leave, other leave, hourly employees, full time temporaries, part-time regular (<50%), part-time temporary, hourly and severance pay.
- (f) Leave pool base (as described above), plus part-time regular (<50%), overtime premium and leave assessed.

ARTICLE 8 - RESERVED

ARTICLE 9 - PAYMENT DUE DATE

- (a) Payments under this Agreement will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.
- (b) The date of the check issued in payment shall be considered to be the date payment is made.
- (c) Payments under this Agreement will not be paid earlier than the date specified herein unless the Recipient offers a discount. The Government will take discounts only when economically justified under the provisions of Volume 1, Treasury Fiscal Requirements Manual 6-8040.30.

ARTICLE 10 - INVOICE REOUIREMENTS

Invoices shall be submitted in an original and three copies to: U.S. Department of Transportation, Maritime Administration, Division of Accounting Operations, MAR-333 Room 7319, 400 7th Street, SW, Washington, DC 20590. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (a) Name of the business concern and invoice date.
- (b) Agreement number.
- (c) Description, price, and quantity of property and services actually delivered or rendered.

(d) Shipping and payment terms.

(e) Other substantiating documentation or information as required by the Agreements/Contracting Officer

ARTICLE 11- METHOD OF PAYMENT

(a) Payments under this Agreement will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Recipient shall forward the following information in writing to the Agreements/Contracting Officer not later than 7 days after receipt of notice of award.

(1) Cooperative Agreement Number.

(2) Full name (where practicable), title, phone number, company's IRS Taxpayer ID number, and complete mailing address of responsible officials), (i) to whom checks are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(3) The following bank account information required accomplishing wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to DOT/Maritime Administration, Division of Accounting operations, MAR-333, 400 Seventh Street, SW., Room 7319, Washington, DC 20590 in writing at least 30 days before the effective date of change. It is the Recipient's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraph (b) and (c) must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and Agreement number.

(e) Failure to submit information required by this clause could result in delay in processing of invoices for payment.

ARTICLE 12 - AVAILABILITY OF FUNDS

Funds are not presently available for performance under this Agreement beyond the period shown in Article 7. The Government's obligation for funding beyond that period is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Agreements/Contracting Officer for this Agreement and until the Recipient receives notice of such availability, to be confirmed in writing by the Agreements/Contracting Officer.

ARTICLE 13 - SPECIAL AGREEMENT REOUIREMENTS

Until such time as this Agreement is fully funded, Article 14 "Limitation of Cost" shall be ineffective and Article 15 "Limitation of Funds" shall apply. At such time as this Agreement is fully funded, Article 14 shall become fully effective and applicable in lieu of Article 15.

ARTICLE 14 - LIMITATION OF COST

(a) The parties estimate that performance of this Agreement will not cost the Government more than (1) the estimated cost specified in Article 7. The Recipient agrees to use its best efforts to perform the work and all obligations under this Agreement within the estimated cost.

(b) The Recipient shall notify the Agreements/Contracting Officer in writing whenever it has reason to believe that

(1) The costs the Recipient expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in Article 7; or

(2) The total cost for the performance of this Agreement will be, either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Recipient shall provide the Agreements/Contracting officer a revised estimate of the total cost of performing this Agreement.

(d) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this provision -

(1) The Government is not obligated to reimburse the Recipient for costs incurred in excess of the estimated cost specified in Article 7; and

(2) The Recipient is not obligated to continue performance under this Agreement (including actions under the Termination provision of this Agreement) or otherwise incur costs in excess of the estimated cost specified in Article 7, until the Agreements/Contracting Officer (i) notifies the Recipient in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Agreement.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Agreements/Contracting Officer, shall affect this Agreement's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Recipient for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of the Agreement or as a result of termination.

(f) If the estimated cost specified in Article 7 is increased, any costs the Recipient incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Agreements/Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Changes in accordance with Article 29 shall not be considered an authorization to exceed the estimated cost to the Government specified in Article 7, unless they contain a statement increasing the estimated cost.

(h) If this Agreement is terminated or the estimated cost is not increased, the Government and the Recipient shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

ARTICLE 15 - LIMITATION OF FUNDS

(a) The parties estimate that performance of this Agreement will not cost the Government more than the estimated cost specified in Article 7. The Recipient agrees to use its best efforts to perform the work specified in the schedule under this Agreement within the estimated cost.

(b) Article 7 specifies the amount presently available for payment by the Government and allotted to this Agreement, the items covered, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the Agreement up to the full estimated cost to the Government specified in Article 7. The Recipient agrees to perform, or have performed, work on the Agreement up to the point at which the total amount paid and payable by the Government under the Agreement approximates but does not exceed the total amount actually allotted by the Government to the Agreement.

(c) The Recipient shall notify the Agreements/Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Agreement by the Government. The notice shall state the estimated amount of additional funds required continuing performance for the period of performance specified in Article 7.

(d) Sixty days before the end of the period specified in Article 7, the Recipient shall notify the Agreements/Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Agreement or for any further period of performance, and when the funds will be required.

(e) If, after notification, additional funds are not allotted, the Recipient's written request the Agreements/Contracting officer will terminate this Agreement on that date in accordance with the provisions of the Termination provision of this Agreement. If the Recipient estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Agreements/Contracting Officer may terminate this Agreement on that later date.

(f) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this provision -

(1) The Government is not obligated to reimburse the Recipient for costs incurred in excess of the total amount allotted by the Government to this Agreement; and

(2) The Recipient is not obligated to continue performance under this Agreement (including actions under the Termination provision of this Agreement) or otherwise incur costs in excess of the amount then allotted to the Agreement by the Government.

(g) The estimated cost shall be increased to the extent that the amount allotted by the Government exceeds the estimated cost specified in Article 7.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Agreements/Contracting Officer, shall affect the amount allotted by the Government to this Agreement. in the absence of the specified notice, the Government is not obligated to reimburse the Recipient for any costs in excess of the total amount allotted by the Government to this Agreement, whether incurred during the course of the Agreement or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the Agreement is increased, any costs the Recipient incurs before the increase that are in excess of the amount previously allotted by the Government shall be allowable to the same extent as if incurred afterward, unless the Agreements/ Contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Changes in accordance with Article 29 shall not be considered an authorization to exceed the amount allotted by the Government specified in Article 7, unless they contain a statement increasing the amount allotted.

(k) Nothing in this provision shall affect the right of the Government to terminate this Agreement. If this Agreement is terminated the Government and the Recipient shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

ARTICLE 16 - NOTICE OF INTENT TO DISALLOW COSTS

(a) Notwithstanding any other provision of this Agreement -

(1) The Agreements/Contracting Officer may at any time issue to the Recipient a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the Agreement terms; and

(2) The Recipient may, after receiving a notice under subparagraph (1) above, submit a written response to the Agreements/Contracting Officer, with justification for allowance of the costs. If the Recipient does respond within 60 days, the Agreements/Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow costs provision shall not affect the Government's rights to take exception to incurred costs.

ARTICLE 17 - TRAVEL REOUIREMENTS

Travel required by and performed by the Recipient in direct performance of this Agreement will be reimbursed on a reasonable, actual, allowable basis in accordance with the Federal Travel Regulations. Travel costs may include transportation, subsistence and lodging.

Recipients are encouraged to use U.S. Government contracted air service between selected city-pairs. Notwithstanding the above, it is understood that P.L. 99-234 will govern in the event of any conflict between the two policies.

All proposed travel must be reflected in the Recipient's proposal broken down by each element (e.g., Airfare, Lodging, car rental, taxi, etc.)

For travel performed on a cost reimbursable basis all costs documentation must accompany invoices for reimbursement. Government Recipients, identification required and methods of payment, contain information on use of such service in the Federal Travel Directory, to include listings of city-pairs contract airlines, carriers allowing use.

Particular note should be taken of the transportation guideline section of the directory, which explain the use of carriers offering lower fare rates on a promotional or transitory basis. Savings or other benefits accrue to the account of the government; any special benefits offered as a discount must be submitted to the Government when reimbursement is requested. An agency-provider letter of identification is available on request to the administrative contracting officer. The Federal Travel Directory is published monthly by GSA and is available from the Superintendent of Documents, U.S. Government Printing Office. Washington, D.C. 20402.

ARTICLE 18 - FACILITIES CAPITAL COST OF MONEY

(a) Facilities capital cost of money will be an allowable cost under the contemplated Agreement. The allowability criteria require the prospective Recipient to propose facilities capital cost of money in-its proposal.

(b) If the Recipient does not propose this cost, the resulting Agreement will include a provision entitled "Waiver of Facilities Capital Cost of Money".

ARTICLE 19 - COST REIMBURSEABLE COOPERATIVE AGREEMENT - NO FEE

The Government will reimburse the Recipient for actual, reasonable, allowable costs incurred in performance of this work but shall not pay the Recipient a fee for performing this Agreement.

ARTICLE 20 - STATEMENT OF WORK/SPECIFICATIONS

The Recipient shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified); to perform the Statement of Work/Specifications provided as Attachment C to this Agreement.

Recipient's Proposal No. 03-TRB-370-01 dated January 12, 2004, is incorporated by reference through page 56 into this agreement. The Marine Board conducts studies and prepares reports in response to requests from sponsors and its own initiative. In accomplishing its work, the Marine Board consults with officials of sponsoring agencies, and with experts in industry and academia. The scope of the Program and continuing Activities are set forth in the Marine Board's incorporated proposal. Specific technical direction of the Program and development of the Strategic Plan is overseen by the Marine Board of the National Research Council, National Academy of Sciences.

ARTICLE 21 - DELIVERABLES

The Recipient shall submit:

1. A Financial Status Report as described in Article 32 not more frequently than quarterly or less frequently than annually.
2. A Performance Report as described in Article 33 will be prepared, submitted, reproduced and distributed concurrent with the Financial Status Report described in paragraph I above. For purposes of this Agreement the Marine Board Annual Report, will serve, as the Performance Report required by the OMB Circular. The Marine Board Annual Report is a final administrative report summarizing the activities of the Marine Board and will be prepared, submitted, reproduced and distributed by March 31st of each year to the Maritime Administration and other sponsors, unless the agreement is extended, in which case, the final administrative report will be prepared in accordance with the terms of the extension.

Two copies of all reports required hereunder shall be furnished to the Agreements/Officer Technical Representative (AOTR). One copy of all reports shall be furnished to each of the sponsors. One copy of all reports shall be furnished to the Agreements/Contracting Officer (ACO).

ARTICLE 22 - PRESERVATION AND PACKAGING

The Recipient shall ensure that the material to be furnished under this Agreement is packaged in a manner to ensure prompt, intact delivery. As a minimum, this shall consist of the Recipient's standard commercial packaging.

ARTICLE 23 - MARKING REQUIREMENT

Each package shall be marked with the appropriate delivery address, Agreement number, and name and address of the Recipient, for return address purposes, on the outside of the packing container.

ARTICLE 24 - DELEGATION OF INSPECTION AND ACCEPTANCE

The Agreement Officer's Technical Representative shall be delegated the responsibility and authority to conduct inspection and acceptance duties for this Agreement. (See Article 27)

ARTICLE 25 - PERIOD OF PERFORMANCE

The period of performance of this Agreement is from July 1, 2004 through December 31, 2009.

ARTICLE 26 - EFFECTIVE DATE

The effective date for this Agreement is July 1, 2004.

ARTICLE 27 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE- (AOTR

a. Alex Landsburg is hereby designated as the AOTR for this Agreement. The AOTR is located at the Department of Transportation, Maritime Administration (MAR-230), 400 Seventh Street, SW, Room 7307 Washington, D.C. 20590. He may be reached at telephone (202) 366-1923.

b. The AOTR is responsible for the technical aspects of the project and technical liaison with the Recipient.

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

d. The Government at any time may change the AOTR, but the Agreements/Contracting officer in writing will promptly provide notification of the change, including the name and address of the successor AOTR, to the Recipient.

ARTICLE 28 - ADDRESS OF CORRESPONDENCE

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

Department of Transportation
Maritime Administration
Office of Acquisitions, MAR-380
400 Seventh Street, SW, Room 7310
Washington, DC 20590

ARTICLE 29 - CHANGES

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

(b) The Agreements/Contracting Officer may at any time, by a written order and without notice to the sureties, make changes, within the general scope of this Agreement, in the

services to be performed, including reporting requirements related thereto. No oral statement of any person, and no written statement of anyone other than the Agreements/Contracting Officer, shall modify or otherwise affect the terms of this Agreement.

(c) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any services under this Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made in the estimated cost and performance period, and this Agreement shall be modified in writing accordingly.

(d) The Recipient shall, within thirty (30) days after receipt of a written change order, or within such additional periods as may be allowed by the Agreements/Contracting Officer in writing or otherwise approved by the Agreements/Contracting Officer, submit a written statement with supporting details as to whether or not the change order has increased or decreased or will increase or decrease the cost of or the time required for the performance of any part of the work under this Agreement, whether changed or not changed by any such order. The Recipient shall promptly provide such additional, supporting details as may be requested by the Agreements/Contracting Officer. In the event of failure of the Recipient to submit such written statement or details, the Agreements/Contracting Officer may determine, on the basis of available information, the extent of applicable equitable adjustment, if any, but the reservation of such right of determination shall not excuse the Recipient from complying with the submission requirement.

(e) Subject to the provisions of paragraph (d) above, the Recipient and the Agreements/Contracting Officer may agree upon the equitable adjustment to be made in the price's performance period, or both, and this Agreement shall be modified in writing accordingly. In the event of their failure to agree upon the equitable adjustment, the Agreements/Contracting Officer shall determine, on the basis of information available to him, the equitable adjustment, if any.

(f) Failure to agree to any equitable adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes Article-contained herein. However, nothing in this Article shall excuse the Recipient from proceeding with this Agreement as changed.

(g) Notwithstanding the provisions of paragraphs (b) and (c) above, the estimated cost of this Agreement shall not be increased or deemed to be increased except by specific written modification of this Agreement indicating the new estimated cost.

ARTICLE 30 - NOTICE OF DELAY

If the Recipient becomes unable to complete the Agreement work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Recipient shall give the Agreements/Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating

the anticipated delay becomes known to the Recipient but in no event less than forty-five (45) days before the completion date specified in this Agreement, unless otherwise directed by the Agreements/Contracting Officer. When notice is so required, the Agreements/Contracting officer may extend the time specified for such period as deemed advisable.

ARTICLE 31 - ORDER OF PRECEDENCE

This Agreement, in its entirety, is comprised of these Provisions and OMB Circular A-110 dated November 28, 1999 is provided herewith as Attachment D. In the event of inconsistency, these Provisions shall control, except when an authorized deviation is required by Subpart A, paragraph 4 of OMB Circular A-110.

ARTICLE 32 - FINANCIAL STATUS REPORTING

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

Not more often than quarterly, or less frequently than annually, the Recipient must submit a Financial Status Report using either form SF 269 or SF 269A as set forth in OMB Circular A-110, Subpart C, para 52.

ARTICLE 33 - PERFORMANCE REPORT

(REF: OMB CIR A-110, Subpart C, Para 511

Concurrent with submission of the Financial Status Report described in Article 32 above, the Recipient must submit a Performance Report as set forth in of OMB Circular A-110, Subpart C, para 51. For purposes of this Agreement, the Marine Board Annual Report, which is prepared and submitted annually, will serve as the Performance Report required by the OMB Circular.

ARTICLE 34 - SUSPENSION OR TERMINATION REF: OMB CIR A-1101

As prescribed by OMB Circular A-110, Subpart A, para 2, the following definitions apply under this Article:

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

Suspension - means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal-awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689 "Debarment and Suspension."

Notwithstanding the specific terms of this Article, Termination and Enforcement procedures shall be conducted in accordance with OMB Circular A-110, Subpart C, and paragraphs 60 through 62.

When the Recipient has failed to comply with the terms of the grant or other agreement and conditions or standards, MARAD may, on reasonable notice to the Recipient, suspend the grant or other agreement, pending corrective action by the Recipient, or a decision by MARAD or the Recipient to terminate in accordance with the provisions listed below for termination for cause or termination for convenience.

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

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

ARTICLE 35 - PROCUREMENT STANDARDS

(REF: OMB CIR A-110, Subpart C, paragraphs 40-481

Compliance with the procurement standards set forth in OMB Circular A-110, Subpart C, paragraphs 40-48, is required in performance of this Agreement. The OMB Circular provided at Attachment D provides the specific approval requirements, standards, etc. for conduct of procurements under this Agreement.

ARTICLE 36 - DEFINITIONS

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

the Agreements/Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Agreements/Contracting Officer" means a person with the authority to enter into, administer, and/or terminate agreements and contracts and make related determinations and findings. The term includes certain authorized representatives of the Agreements/Contracting officer acting within the limits of their authority as delegated by the Agreements/Contracting Officer.

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

ARTICLE 37 - OFFICIALS NOT TO BENEFIT

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

ARTICLE 38 - GRATUITIES

(a) The right of the Recipient to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Recipient, its agent, or another representative -

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain an Agreement or favorable treatment under a Agreement.

(b) Any court having lawful jurisdiction may review the facts supporting this determination.

(c) If this Agreement is terminated under paragraph (a) above, the Government is entitled

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Recipient in giving gratuities to the person concerned, as determined by the agency head or a designee.

(This subparagraph (c)(2) is applicable only if this agreement uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 39 - COVENANT AGAINST CONTINGENT FEES

(a) The Recipient warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the total price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this provision, means an established commercial or selling agency, maintained by a Recipient for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government Agreements nor holds itself out as being able to obtain any Government Agreement through improper influence. "Bona fide employee," as used in this provision, means a person, employed by a Recipient and subject to the Recipient's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes exert improper influence to solicit or obtain Government Agreements nor holds out as being able to obtain any Government Agreement through improper influence.

"Contingent fee", as used in this provision, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government Agreement.

"Improper influence," as used in this provision, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government Agreement on any basis other than the merits of the matter.

ARTICLE 40 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

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

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

- (1) The awarding of any Federal contract
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an

Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

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

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

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

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Recipients to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b) (3) (i) (A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted' where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action-

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b) (3) (i) (A) of this clause are permitted under this clause.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b) (1) of this clause, does not'apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b) (3)(ii)(A) of this clause, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivision (b)(3)(ii)(A) (1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Recipient who requests or receives from an agency a Federal Cooperative Agreement shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes.

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employees), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Recipient shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal Cooperative Agreement.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Recipient. The Recipient shall submit all disclosures to the Agreements/Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Recipient.

(d) Agreement. The Recipient agrees not to make any payment prohibited by this clause.

(e) Penalties. (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Recipients may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

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

ARTICLE 41 - EOUAL OPPORTUNITY

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

- (1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but is not limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (4) The Recipient shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.
- (6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or other of the Secretary of Labor, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

ARTICLE 42 - DRUG-FREE WORKPLACE

The Certification regarding a Drug-Free Workplace is contained in Attachment E and is incorporated into this Agreement. The terms "Recipient", "Agreements/Contracting Officer", and "Agreement" shall be substituted wherever the terms "Contractor" Contracting Officer", and "Contract", respectively appear.

ARTICLE 43 - RIGHTS IN DATA

The Government shall have unlimited rights to computer software and data first produced in the performance of this Agreement including manuals or instructional material.

"Unlimited rights" as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have and permit others to do so. "Computer software" as used in this provision, means computer programs including source code, computer databases, and documentation thereof. The Recipient shall have the same unlimited rights to computer software and data produced under this Agreement.

ARTICLE 44 - CERTIFICATIONS

The Recipient shall complete the Certifications provided herewith as Attachment E, which are incorporated into and made a part of this Agreement.

MARITIME ADMINISTRATION
DEPARTMENT OF TRANSPORTATION



Tracey L. Ford
Agreements/Contracting Officer

Date

RECIPIENT:

NATIONAL ACADEMY OF SCIENCES, TRANSPORTATION RESEARCH BOARD,
MARINE BOARD

BY: _____

ATTEST: _____