

2. CONTRACT (Proc. inst. ident.) NO. DTMA1D10002	3. EFFECTIVE DATE 04/23/2010	4. REQUISITION/PURCHASE REQUEST PROJECT NO. See Lines
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5. ISSUED BY CODE 00091 DOT/Maritime Administration, MAR-380 1200 New Jersey Ave SE, MAR380 W26-429  Washington, DC 20590-	6. ADMINISTERED BY (If other than Item 5) CODE
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7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) EA Engineering, Science, And Technology, Inc.  11019 MC Cormick Rd Ste 400 Hunt Valley, MD 21031-1412	8. DELIVERY <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other (See below)
	9. DISCOUNT FOR PROMPT PAYMENT 10 days % 20 days % 30 days % days %
	10. SUBMIT INVOICES (4 Copies unless other - wise specified) To THE ADDRESS SHOWN IN: ITEM 12

11. SHIP TO/MARK FOR CODE HQ810 Scott Davies DOT/Maritime Administration, MAR-810 1200 New Jersey Ave, SE MAR810 W28-201  Washington, DC 20590-	12. PAYMENT WILL BE MADE BY CODE DOT/ Enterprise Services Center (ESC) OFO/FAA, Oklahoma City MARAD A/P Headquarters Invoices Branch AMZ-150 PO Box 25710  Oklahoma City, OK 73125-
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( )	14. ACCOUNTING AND APPROPRIATION DATA 2010 - - 70X175 - 0RA0808 - 92 - GMC - SV - 0000 - 150000 - - 25305 - - - - -
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	<b>SEE LINE ITEM DETAIL</b>				

**15G. TOTAL AMOUNT OF CONTRACT** 1,000,000.00

16. TABLE OF CONTENTS							
( )	SEC	DESCRIPTION	PAGE(S)	( )	SEC	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
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X	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS/WORK STATEMENT			J	LIST OF ATTACHMENTS	
X	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS	
X	F	DELIVERIES AND PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
X	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
X	H	SPECIAL CONTRACT REQUIREMENTS					

**CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE**

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as attached or incorporated by reference herein. <i>(Attachments are listed herein.)</i>	18. <input checked="" type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number <u>DTMA1R09007/0001</u> including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
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19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER Bruce Markman
19B. NAME OF CONTRACTOR By _____ <i>(Signature of person authorized to sign)</i>	19C. DATE SIGNED
20B. UNITED STATES OF AMERICA By  <i>(Signature of Contracting Officer)</i>	20C. DATE SIGNED 04/23/2010



<b>Line Item Summary</b>	<b>Document Number</b> DTMA1D10002	<b>Title</b> Guam Commercial Port Improvement	<b>Page</b> 3 of 54
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**Total Funding:** \$1,000,000.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
2010	70X175	0RA0808	92	GMC	SV	0000	150000		25305		
<b>Division</b>	<b>Closed FYs</b>	<b>Cancelled Fund</b>									

Line Item Number	Description	CLIN Ref	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
0006	Program Management Support	0006	(05/01/2015 to 04/30/2016)	0.00		\$ .000	\$ 0.00 OPTION PERIOD
0007	Program Management Support	0007	(05/01/2016 to 04/30/2017)	0.00		\$ .000	\$ 0.00 OPTION PERIOD
0008	Guaranteed Minimum	0001	(05/01/2010 to 04/30/2017)	1.00	JOB	\$1,000,000.000	\$ 1,000,000.00
<p>Funding to cover the minimum order amount under this IDIQ.</p> <p>Ref Req No: PR800100010</p> <p>Funding Information:  2010 - - 70X175 - 0RA0808 - 92 - GMC - SV - 0000 - 150000 - -  25305 - - - - -  \$1,000,000.00</p>							
						<b>Total Cost:</b>	\$1,000,000.00

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COMMERCIAL CLAUSES

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
52.211-13	Time Extensions	September 2000
52.212-05 Alt I	Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items (Aug 2006) - Alternate I	February 2000
52.222-27	Affirmative Action Compliance Requirements for Construction	February 1999
52.225-09	Buy American Act - Construction Materials	February 2009
52.225-12	Notice of Buy American Act Requirement - Construction Materials under Trade Agreements	February 2009
52.227-04	Patent Indemnity-Construction Contracts	December 2007
52.236-05	Material and Workmanship	April 1984
52.236-07	Permits and Responsibilities	November 1991
52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts	April 1984
52.236-19	Organization and Direction of the Work	April 1984
52.246-12	Inspection of Construction	August 1996
52.248-03	Value Engineering-Construction	September 2006
52.249-06 Alt III	Termination (Cost-Reimbursement) (May 2004) - Alternate III	September 1996

2 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT - FEBRUARY 2009  
CONSTRUCTION MATERIALS

(a) Definitions. “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act–Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-09).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the

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appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

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## SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

### C.1 SCOPE OF WORK

#### SCOPE OF WORK FOR THE PORT OF GUAM IMPROVEMENT ENTERPRISE PROGRAM

Part 1 - OVERVIEW - The Jose D. Leon Guerrero Commercial Port is a vital asset to the economy of Guam and to the national security of the United States. The Port was originally constructed by the U.S. Navy in the 1960's and was turned over to the Government of Guam in the 1970's. Since that time, the Port has remained largely unchanged and requires substantial improvements in order to continue providing the level of service required by the community and other stakeholders. Further, the timely completion of this improvement program is necessary in order to provide modern and efficient transportation access to the island of Guam and to the region to meet the Department of Defense requirements for the Guam build-up.

The Port Authority of Guam has recently completed a Master Plan which is currently under consideration by the Guam Legislature. Additionally, the Government of Guam has just entered into an agreement with the U.S. Department of Transportation, Maritime Administration to facilitate the expansion and modernization of the Jose D. Leon Guerrero Commercial Port.

One of the key critical first steps is the acquisition of a Program Management Team (PMT) to oversee the entire project from initiation to completion.

Part 2 - BACKGROUND - The Port Authority of Guam (PAG) is planning and conducting a variety of modernization activities to enhance the transportation of goods and people within the Territory of Guam and to improve and expand needed services to its citizens and the military. Potential modernization activities are scheduled to occur over approximately the next ten years using Federal, non-federal, and private funds administered by the U.S. Department of Transportation (DOT) Maritime Administration. Expansion objectives include, but are not limited to:

- " Expansion of commercial dock space,
- " Providing facilities necessary to support rapid military deployment from western pacific military bases,
- " Additional bulk and break-bulk capacity,
- " New Gate Processing System,
- " New Terminal Information Technology Systems,
- " Warehouse demolition,
- " Utility improvements,
- " Road connections to Commercial Port,
- " Improved terminal operations, layout, and traffic flow, and
- " Acquisition, installation, and operation of security equipment and services.

The Maritime Administration, working with the PAG intends to initiate implementation of this expansion program through multiple projects to accomplish multiple goals in a relatively short time period. To meet the goals of the modernization program, the Port must: ensure funding, evaluate various niche market opportunities, perform programming and planning, devise and manage multiple interrelated schedules, coordinate with the community, obtain environmental permits and records of decision, manage design and construction activities, direct and oversee contractor activities, interface with the major stakeholders, acquire Port Intelligent Transportation Systems (ITS) and security equipment and services, and maintain budgets and program progress. Accomplishment of all of these activities within a finite timeframe represents a significant challenge for the Maritime Administration and PAG.

Part 3 - OBJECTIVE. To meet this challenge, a Contract is required for program management, environmental support, engineering and design services, and construction management for the duration of the modernization and expansion process. The objective of this contract scope of work is to provide the contractual framework that addresses specific management needs while also providing contractual and technical flexibility to address a range of services that may be required. This contract

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scope of work defines the types of services to be provided through an Indefinite Delivery/Indefinite Quantity (ID/IQ) contract under which individual task orders (TOs) can be issued as needed.

Part 4 - SERVICES.

4.1 The contractor will provide technical management, and staff augmentation support services, as directed by TOs, for the duration of the project. These services will be within the following general categories: program management, port planning and conceptual engineering, environmental documentation and permitting, design management, construction management, and coordination with and support to the Department of Defense as may be required. These service categories are briefly described below. The descriptions are not intended to represent each and every type of service that may be provided under this contract. As such, they should not be construed as limiting the nature or breadth of services that might eventually be included under this contract.

4.2 Program Management Services. As directed in specific TOs, the contractor's team will provide the expertise needed to establish, operate, and maintain an effective Program Management Office (PMO) to support general Port modernization activities. The PMO will be proactive with the Maritime Administration and PAG staff to identify and address program management issues and to develop and implement administrative, technical, and public relations strategies that will promote the success of the program. The PMO will consist of a small group of key personnel to provide seamless communication with the Maritime Administration, PAG, and other key individuals. Personnel in the PMO should include a Program Manager, Contracts/Subcontracts Specialist, Information Technology Specialist, Budget/Schedule Specialist, Engineers, and others determined to be necessary by the Maritime Administration and the PAG.

The Maritime Administration may issue TOs to the contractor, as part of the Program Management Services, to perform the following actions:

- " Develop and maintain a Program Management Plan and Master Schedule.
- " Provide agency coordination and consultation.
- " Perform program administration (e.g., budget monitoring, contracting/subcontracting, office management, and accounting).
- " Manage cost control.
- " Monitor and report on status.
- " Maintain document control and record keeping.
- " Conduct community outreach/public involvement.
- " Ensure Quality Assurance/Quality Control.
- " Perform other activities as directed in task orders by the Maritime Administration.

4.3 Port Planning and Preliminary Design Services. The government may issue task orders for port planning and preliminary design services to augment, modify, and/or implement the components of the existing Port Master Plan. The government may order the following kinds of services. The list is representative only and services which may be ordered are not limited to those described herein.

- " Port planning and preliminary design activities necessary to define operational and infrastructure development alternatives in greater detail than the existing Port Master Plan Augmenting and detailing such alternatives will be needed for various funding scenarios.
- " Synthesize information contained in the numerous Port planning documents and other previous planning studies and stakeholder activities.
- " Conduct appropriate meetings with the Port staff, existing tenants, and potential future commercial and military users of the Port to understand their needs and requirements.
- " Review Port and tenant operational procedures and prepare recommendations made that might result in more efficient utilization of the Port facilities, berths, storage areas, equipment, etc.
- " Make recommendations regarding berthing and terminal requirements which will be determined for various cargo-handling and non-cargo terminals and related facilities, including:

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- Container, Bulk, Break-Bulk, Ro/Ro, and Barge Berths
- Relocation of Port Administration and Transit Buildings
- Other related marine facilities needed for cargo, passenger and military needs
- Minimizing disruption of port operations during phased construction

4.4 Environmental Documentation and Permitting Services. The Maritime Administration may order the following kinds of environmental documentation and permitting services.

" Prepare and publish the appropriate environmental documentation in accordance with the National Environmental Policy Act (NEPA) to conduct the port modernization project as currently proposed. In the performance of the contract, the contractor will ensure compliance with received permits.

" Monitor and revise as necessary, environmental documentation and assist the PAG in obtaining any additional required permits or permit modifications.

" In consultation with the Maritime Administration and the PAG, define alternative ways of accomplishing any changes to the current design of the project as required in the permit, using the concepts developed in the Port Planning process.

" The contractor will be responsible for conducting all necessary additional studies related to the NEPA documentation and will consult with appropriate federal and territorial agencies such as the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, Guam Environmental Protection Agency, U.S. Environmental Protection Agency, and Territory Historic Preservation Office.

" Support the PAG in obtaining other necessary permits for the modernization program. These may include, but are not limited to construction, dredging, water quality, safety, and environmental permits. Tasks may include all management and technical activities required to obtain the permits.

The environmental documentation will describe the potentially affected environmental, economic, and social resources, identify the possible consequences to those resources from implementing the proposed action, and define ways to mitigating negative consequences. Any additional NEPA documentation, including compliance with the Endangered Species Act, will be prepared according to Council for Environmental Quality (CEQ) regulations.

4.5 Design Management Services. The Maritime Administration may order design management services for port modernization activities. Representative examples of tasks which may be ordered include:

- " Identify design requirements.
- " Identify and pre-qualify design firms with expertise specific to the feature or system to be designed.
- " Solicit demonstrations of qualifications, including approaches, systems, control features, and available personnel from pre-qualified firms.
- " Review submittals for pre-qualified firms.
- " Make recommendations for selection for concurrence.
- " Manage procurement of the selected firms in accordance with approved commercial purchasing procedures.
- " Assist in the guidance and direction of design firms.
- " Provide inspection, oversight, and management of design contractors.
- " Review and comment on provided designs, specifications, bid package information, and other documents.
- " Procure, as directed by TO, design services.

4.6 Construction Management Services. The Government may order construction management services for port modernization activities. Task orders may include, but are not limited to:

- " Identify construction requirements.
- " Identify and pre-qualify construction firms with expertise specific to the feature or system to be constructed.
- " Solicit demonstrations of qualifications, including approaches, systems, control features, and available personnel from pre-qualified firms.
- " Review submittals from pre-qualified firms.
- " Make recommendations for selection for concurrence.
- " Procure, as directed by TO, construction services.
- " Provide inspection, oversight, and management of construction contractors.

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4.7 Contractor Oversight Services. The Government may order oversight of design and construction contractors. Services which may be ordered include, but are not limited to:

- " Tracking budget and schedule performance.
- " Providing technical and management coordination.
- " Holding, or participating in, project progress meetings.
- " Reviewing design documents and associated materials.
- " Inspecting construction activities.
- " Reviewing and recommend invoices for payment.

4.8 - Department of Defense coordination and support.

The Government may issue a task order under which the Contractor will interface with the appropriate DoD entities. Activities shall include but are not limited to

- " Meetings with DoD and PAG personnel.
- " Development of Port planning strategies, conceptual designs, and costs to meet DoD requirements.
- " Participation in public meetings or other venues to obtain public comment on proposed DoD activities at the Port.
- " Other activities ordered via Task Order.

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SECTION E -- INSPECTION AND ACCEPTANCE

E.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>

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.246-02	Inspection of Supplies--Fixed Price	August 1996
52.246-04	Inspection of Services--Fixed-Price	August 1996
52.246-05	Inspection Of Services Cost-Reimbursement	April 1984
52.246-15	Certificate of Conformance	April 1984
TEXT	ACCEPTANCE OF CONSTRUCTION	
TEXT	INSPECTION AND ACCEPTANCE	

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SECTION F -- DELIVERIES OR PERFORMANCE

F.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

Clause	Title	Date
52.242-15	Stop-Work Order	August 1989
52.242-17	Government Delay of Work	April 1984
52.247-34	F.o.b. Destination	November 1991

F.2 DELIVERIES OR PERFORMANCE

PERIOD OF PERFORMANCE

The period of performance for the resultant contract shall be for three (3) year base period from date of award plus (4) one-year option years.

WEEKLY PROGRESS REPORTING

A Weekly Progress report shall be sent to key stakeholders prior to the weekly progress conference call. As a minimum, the report shall cover the following items:

- (a) The percentage of work performed during the previous month
- (b) Significant findings, problems, delays, inclusions, events, trends, etc. of the reporting period which result from or affect the performance of the contract.
- (c) Specify actions required by the Government, to assist in the resolution of a problem or, to effect timely progression of the contract.
- (d) The percentage of project completed
- (e) The percentage of funds expended during the reporting period
- (f) A comparison of the actual and planned accumulated costs through the reporting period.

TASK ORDERS

The Offeror shall perform work under this contract as specified in written task orders issued by the Contracting Officer. Task Orders shall not change any terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the contractor shall immediately notify the Contracting Officer. Orders placed shall contain the following information:

- (a) Date of Order
- (b) Contract Number and order number

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- (c) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee
- (d) Delivery or performance schedule
- (e) Place of delivery or performance (including consignee)
- (f) Any packaging, packing, and shipping instructions
- (g) Accounting and appropriation data

Task orders shall be issued at the funded amount of the work contemplated therein. The Contractor shall notify the Contracting Officer when funding is 75% expended and the estimated amount to complete the services for that task order, if it is expected to exceed present funds. Depending on funding stream, task orders may be incrementally funded and subsequent funding will be subject to availability of funds.

Each task will set a ceiling price that the Contractor may not exceed, except as specifically authorized by the Contracting Officer.

In order to avoid cost overruns the contractor is obligated, as a consequence of the requirements and the risk imposed by the Limitation of Cost clause, to maintain an accounting and financial reporting system.

#### MINIMUM/MAXIMUM QUANTITY FOR TASK ORDERS

At a minimum, there will be a total of \$1 million dollars in Task Orders for the first year of the base period. The quantities of supplies or services specified in Section B are estimates only and are not purchased by the proposed contract. The maximum ordered in this contract is estimated to be \$400 million dollars.

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## SECTION G -- CONTRACT ADMINISTRATION DATA

### G.1 ADDRESS OF CORRESPONDENCE

All correspondence except as otherwise specified, shall be directed to the Contracting Officer at the following address:

U.S. Department of Transportation  
Maritime Administration  
Office of Acquisition, MAR-380  
1200 New Jersey Avenue, S.E., - W28/201  
Washington, D.C. 20590  
Email: bruce.markman@dot.gov  
Facsimile Number: 202-366-1942

### G.2 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

a. The Contracting Officer's Technical Representative (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.

b. The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which 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/her by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor

c. The COTR for this contract will be:

Scott Davies  
U.S. Department of Transportation  
Maritime Administration  
Office of Infrastructure Development and Congestion Mitigation  
1200 New Jersey Avenue, S.E. - W21/226  
Washington, D.C. 20590  
Email Address: scott.davies@dot.gov

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

Susan Lee  
U.S. Department of Transportation  
Maritime Administration  
Office of Infrastructure Development and Congestion Mitigation  
1200 New Jersey Avenue, S.E. - W21/226  
Washington, D.C. 20590  
Email Address: susan.lee@dot.gov

e. 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.

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### G.3 INVOICE REQUIREMENTS

Invoices can be mailed or submitted to the following address:

U.S. Mail  
MARAD, A/P Branch AMZ-150  
P.O. Box 2570  
Oklahoma, OK 73125

FEDEX  
MARAD A/P Branch, AMZ  
6500 S. MACARTHUR BLVD.  
Oklahoma, City, OK 73169

In addition, all vendors will have the option to send invoices electronically. The invoices must be in PDF format. Vendors can submit electronic invoices in the following email address:

MARADInvoices@FAA.GOV

- a. Invoices shall be submitted through Electronic Invoice System (EIS) and inform MARAD of the submittal to EIS
- b. To constitute a proper invoice, the invoice must include the following information and/or documentation
  - (1) Name of the business concern
  - (2) Invoice date
  - (3) Contract Number, or other authorization for supplies delivered or services performed
  - (4) Description price and quantity of supplies and services actual 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.

Upon completion of the web-base system, invoices shall be available on-line. 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.

#### ELECTRONIC FUNS TRANSFER (EFT) PAYMENT REQUIREMENTS

FAR 52.223-33 Payment by Electronic Funds Transfer central Contractor registration (May 1999) is included in this solicitation/contract. All Contractor payments will be made by EFT unless accepted or otherwise determined by the paying office designated in the contract.

#### POINTS OF CONTACT

- a. PROCURING CONTRACTING OFFICER (PCO)

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Bruce Markman  
U.S. Department of Transportation  
Maritime Administration  
Office of Acquisition MAR380  
1200 New Jersey Avenue, S.E. - W28/201  
Washington, D.C. 20590  
Telephone: (202) 366-1942  
E-mail Address: bruce.markman@dot.gov

#### b. LOCAL CONTRACT ADMINISTRATION

TBD

All Correspondence shall be directed to the Procuring Contracting Officer except as otherwise specified.

### G.4 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 Orders may vary widely from one another. In as much as this effort will result in one offeror receiving multiple task orders that include cost-reimbursable features, the Government reserves the right to require the contractor to submit formal cost and pricing data for negotiations of task orders or modifications thereto.

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.

The Contractor must acknowledge receipt within three calendar days from the time the Task Order is issued.

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

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 the task
- Task cost makeup including individuals proposed to do the work, hours, loaded rates, material including material handling cost, and any other cost documentation
- Date by which task must be issued, if project critical path would be affected.

#### ACCEPTANCE OF THE TASK ORDER

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

#### EXPENDITURE AND TRACKING OR REIMBURSEABLE FUNDS

Upon receipt of the authority to commit funds, the Contractor will issue an order for the supplies and/or services.

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 Jose D. Leon Guerrero Commercial Port Improvement Program.

#### G.5 TRAVEL REQUIREMENTS

Travel associated with Task Orders, shall be performed by the Contractor in direct support of this contract shall be reimbursed on an 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 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.

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## SECTION H -- SPECIAL CONTRACT REQUIREMENTS

### H.1 E-VERIFY

#### FAR 52.227-54 E-Verify

##### For Federal Contract Employers

Federal contractors and subcontractors was required to begin using the E-Verify system starting September 8, 2009. The new rule implements Executive Order 12989, as amended by President George W. Bush on June 6, 2008, directing federal agencies to require that federal contractors agree to electronically verify the employment eligibility of their employees. The amended Executive Order reinforces the policy, first announced in 1996, that the federal government does business with companies that have a legal workforce.

As of September 8, 2009, employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause are required to use E-Verify to determine the employment eligibility of:

Employees performing direct, substantial work under those federal contracts

New hires organization wide-regardless of whether they are working on a federal contract

A federal contractor or subcontractor who has a contract with the FAR E-Verify clause also has the option to verify the company's entire workforce.

### H.2 SUPERVISION

The Contractor shall provide the 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.

### H.3 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.

### H.4 KEY PERSONNEL

(a) The Contractor shall assign to this contract key personnel as indicated in the contractor's technical proposal.

(b) During the first ninety (90) days of performance, the Contractor shall make no substitution 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.

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**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 required by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the person 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.

## H.5 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.

## H.6 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 in 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 interests 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; discovers 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 for 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.

## H.7 PERFORMANCE EVALUATION

a. Contractor performance shall be evaluated by the Contracting Officer throughout the life of the contract. Contractor produce and services, which do not meet the minimum quality standards specified in Attachment A - Scope of Work , and elsewhere in this contract, may be subject to correction. The 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 Clause 52.246-2 or 52.246-4, as incorporated in Section E - Inspection and Acceptance, nor of any other right or correction available to the government.

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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 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.

#### H.8 STANDARD 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.

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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>

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.202-01	Definitions	July 2004
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	April 1984
52.203-06	Restrictions on Subcontractor Sales to the Government	September 2006
52.203-07	Anti-Kickback Procedures	July 1995
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	January 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	January 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	September 2007
52.203-13	Contractor Code of Business Ethics and Conduct	December 2008
52.204-02	Security Requirements	August 1996
52.204-04	Printed or Copied Double-Sided on Recycled Paper	August 2000
52.204-07	Central Contractor Registration	April 2008
52.208-09	Contractor Use of Mandatory Sources of Supply or Services	October 2008
52.209-06	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	September 2006
52.215-02	Audit and Records--Negotiation	March 2009
52.215-08	Order of Precedence--Uniform Contract Format	October 1997
52.215-10	Price Reduction for Defective Cost or Pricing Data	October 1997
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications	October 1997
52.215-12	Subcontractor Cost or Pricing Data	October 1997
52.215-13	Subcontractor Cost or Pricing Data--Modifications	October 1997
52.215-14	Integrity of Unit Prices	October 1997
52.215-15	Pension Adjustments and Asset Reversions	October 2004
52.215-17	Waiver of Facilities Capital Cost of Money	October 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	July 2005
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications	October 1997
52.216-04	Economic Price Adjustment-Labor and Material	January 1997
52.216-07	Allowable Cost and Payment	December 2002
52.216-18	Ordering	October 1995
52.216-19	Order Limitations	October 1995

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52.216-22	Indefinite Quantity	October 1995
52.216-24	Limitation of Government Liability	April 1984
52.216-25	Contract Definitization	October 1997
52.219-08	Utilization of Small Business Concerns	May 2004
52.219-09	Small Business Subcontracting Plan	April 2008
52.219-14	Limitations On Subcontracting	December 1996
52.219-16	Liquidated Damages-Subcontracting Plan	January 1999
52.219-27	Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside	May 2004
52.222-01	Notice to the Government of Labor Disputes	February 1997
52.222-03	Convict Labor	June 2003
52.222-04	Contract Work Hours and Safety Standards Act - Overtime Compensation	July 2005
52.222-11	Subcontracts (Labor Standards)	July 2005
52.222-12	Contract Termination-Debarment	February 1988
52.222-14	Disputes Concerning Labor Standards	February 1988
52.222-15	Certification of Eligibility	February 1988
52.222-20	Walsh-Healy Public Contracts Act	December 1996
52.222-21	Prohibition of Segregated Facilities	February 1999
52.222-26	Equal Opportunity	March 2007
52.222-29	Notification of Visa Denial	June 2003
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.222-36	Affirmative Action For Workers with Disabilities	June 1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.222-41	Service Contract Act of 1965	November 2007
52.222-42	Statement of Equivalent Rates for Federal Hires	May 1989
52.223-03	Hazardous Material Identification and Material Safety Data	January 1997
52.223-05	Pollution Prevention and Right-to-Know Information	August 2003
52.223-06	Drug-Free Workplace	May 2001
52.223-14	Toxic Chemical Release Reporting	August 2003
52.224-01	Privacy Act Notification	April 1984
52.224-02	Privacy Act	April 1984
52.225-01	Buy American Act - Supplies	February 2009
52.225-08	Duty- Free Entry	February 2000
52.225-13	Restrictions on Certain Foreign Purchases	June 2008
52.225-14	Inconsistency Between English Version and Translation of Contract	February 2000
52.227-02	Notice and Assistance Regarding Patent and Copy Infringement	December 2007
52.227-03	Patent Indemnity	April 1984
52.227-09	Refund of Royalties	April 1984
52.227-11	Patent Rights--Ownership by the Contractor	December 2007
52.227-13	Patent Rights--Ownership by the Government	December 2007
52.227-14	Rights in Data--General	December 2007
52.227-17	Rights In Data--Special Works	December 2007
52.227-18	Rights in Data--Existing Works	December 2007
52.228-02	Additional Bond Security	October 1997
52.228-05	Insurance - Work on a Government Installation	January 1997
52.228-07	Insurance--Liability to Third Persons	March 1996

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52.228-12	Prospective Subcontractor Requests for Bonds	October 1995
52.228-15	Performance and Payment Bonds--Construction	November 2006
52.229-04	Federal, State, and Local Taxes (State and Local Adjustments)	April 2003
52.229-06	Taxes--Foreign Fixed-Price Contracts	June 2003
52.230-02	Cost Accounting Standards	October 2008
52.230-03	Disclosure and Consistency of Cost Accounting Practices	October 2008
52.230-06	Administration of Cost Accounting Standards	March 2008
52.232-17	Interest	October 2008
52.232-18	Availability of Funds	April 1984
52.232-19	Availability of Funds for the Next Fiscal Year	April 1984
52.232-20	Limitation Of Cost	April 1984
52.232-22	Limitation of Funds	April 1984
52.232-23	Assignment of Claims	January 1986
52.232-25	Prompt Payment	October 2008
52.232-27	Prompt Payment for Construction Contracts	October 2008
52.232-33	Payment by Electronic Funds Transfer-Central Contractor Registration	October 2003
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information	May 1999
52.232-36	Payment by Third Party	February 2010
52.233-01	Disputes	July 2002
52.233-03	Protest after Award	August 1996
52.233-03 Alt I	Protest after Award (Aug 1996) - Alternate I	June 1985
52.237-02	Protection of Government Buildings, Equipment, And Vegetation	April 1984
52.239-01	Privacy or Security Safeguards	August 1996
52.242-01	Notice of Intent to Disallow Costs	April 1984
52.242-13	Bankruptcy	July 1995
52.243-01	Changes--Fixed Price	August 1987
52.243-02 Alt III	Changes--Cost-Reimbursement (Aug 1987) -Alternate III	April 1984
52.243-07	Notification Of Changes	April 1984
52.244-02	Subcontracts	June 2007
52.244-05	Competition In Subcontracting	December 1996
52.244-06	Subcontracts for Commercial Items	December 2009
52.245-01	Government Property	June 2007
52.245-02	Government Property Installation Operation Services	June 2007
52.246-23	Limitation of Liability	February 1997
52.246-25	Limitation of Liability--Services	February 1997
52.248-01	Value Engineering	February 2000
52.249-01	Termination for Convenience of the Government (Fixed-Price) (Short Form)	April 1984
52.249-02	Termination for Convenience of the Government (Fixed-Price)	May 2004
52.249-06	Termination (Cost-Reimbursement)	May 2004
52.249-08	Default (Fixed-Price Supply and Service)	April 1984
52.251-01	Government Supply Sources	April 1984
52.253-01	Computer Generated Forms	January 1991
52.222-06	Davis-Bacon Act	July 2005

I.2 52.217-08 OPTION TO EXTEND SERVICES

NOVEMBER 1999

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The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within (2) Weeks.

(End of clause)

I.3 52.217-09 OPTION TO EXTEND THE TERM OF THE CONTRACT MARCH 2000

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 90 months.

(End of clause)

I.4 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES OCTOBER 1997

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

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(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

## I.5 LIQUIDATED DAMAGES

Task orders may include provisions for liquidated damages.

## I.6 52.211-05 MATERIAL REQUIREMENTS AUGUST 2000

(a) Definitions.

As used in this clause--

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

## I.7 52.223-02 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION DECEMBER 2007

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**CONTRACTS**

- (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)

I.8      52.223-03      HAZARDOUS MATERIAL IDENTIFICATION AND      JULY 1995  
             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.

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(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.

(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 52.223-10 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.

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"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)

I.10 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.11 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;
- (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

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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](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

(End of clause)

I.12 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](http://www.epeat.net).

(End of clause)

I.13 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.14 EMPLOYMENT ELIGIBILITY VERIFICATION

E-Verify Program FAR Clause 52.222-54 is incorporated by reference.

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

### J.1 ATTACHMENTS

Attachment A - the Port Master Plan link is: <http://www.portofgum.com/Master-Plan-Update-2007-Report-Final-Rev2Public.pdf>.

Attachment B - MARAD Purchasing System Guidance

### J.2 MARAD PURCHASING GUIDANCE

#### ATTACHMENT J-2

Purchasing Policies for Subcontracting Contracts with  
the Maritime Administration

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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

Part 6 Subcontract Procedures

Part 7 Subcontract Administration

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- 3.2 Purchasing Systems Procedures Requirements
- 3.3 Written Procedures Acceptance Process
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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.

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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.

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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.

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### 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.

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.

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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 to the ACO and/or COTR for review, and accepted prior to competitive solicitation. Specifications submitted for ACO and/or COTR 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's 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 specification review and before the award of a subcontract that causes the total specification to exceed \$100,000, the ACO and/or COTR must accept the changes before the issuance of an addendum to a solicitation or award of a subcontract, as applicable.

Notwithstanding the above, the ACO and/or COTR 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

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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 Flow Down Clauses

4.4.1 Flow down 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

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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 a Task Order by Task Order basis.

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.

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- 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

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Each subcontract shall be sequentially numbered for ease of tracking and control. Additionally, the CONTRACTOR shall use unique numbers for each region. 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 addition to the above reporting requirement, 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 by the 5th of each month, the total number and total dollar value of subcontracts awarded as follows:

Size of Firm	Total Number of subcontracts	Total Dollars
Small business concerns (including ANC and Indian tribes)		
Veteran-owned small business concerns		
Service-disabled veteran-owned small business concerns;		
HUBZone small business concerns;		
Small disadvantaged business concerns (including ANC and Indian tribes);		
Women-owned small business concerns		

#### 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.

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## 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 Flow Down 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 (which currently includes 3 clauses,) 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))

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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 flow down 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). Flow down 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) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

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(2) While not required, the Contractor may flow down 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 flow down 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 52.203-11 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.

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(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 52.204-2 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.

#### 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."

#### 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."

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

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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."

#### 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."

#### 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)

#### 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.

#### 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.

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

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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.

#### 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.

#### 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.

#### 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.

#### 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.

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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.

52.225-1 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."

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.

52.227-1 AUTHORIZATION AND CONSENT (JULY 1995)

1. The clause, suitably modified to identify the parties, is required in all subcontracts for supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the dollar limit set forth at 13,000, except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas. See below applicable flowdown language 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."

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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."

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.

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.

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-

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- (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.

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.

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.

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.

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\_\_\_ 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 flow down 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



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- \_\_\_\_\_ 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.

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

K.1 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.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)

K.3 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.]**

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(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.