

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

1. REQUISITION NUMBER  
 PRSAR100072/0001

PAGE 1 OF 18

2. CONTRACT NO. 3. AWARD/EFFECTIVE DATE 11/30/2009 4. ORDER NUMBER DTMA2P10013 5. SOLICITATION NUMBER 6. SOLICITATION ISSUE DATE

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

9. ISSUED BY DOT/Maritime Administration, SAR Acquisition  
 Office of Acquisition, MRG-7200  
 7737 Hampton Boulevard, Building 4D, Room 211  
 Norfolk, VA 23505  
 TEL: (757) 441-3245 ext.  
 FAX: (757) 441-6080 ext.

10. THIS ACQUISITION IS  
 UNRESTRICTED OR  SET ASIDE: 0.00% FOR:  
 SMALL BUSINESS  EMERGING SMALL BUSINESS  
 HUBZONE SMALL BUSINESS  8(A)  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  
 NAICS: 336611  
 SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  
 SEE SCHEDULE

12. DISCOUNT TERMS

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION  
 RFQ  IFB  RFP

15. DELIVER TO See Line Item Detail and Shipping Detail  
 CODE

16. ADMINISTERED BY DOT/Maritime Administration, Atlantic Division Acquisition  
 Office of Acquisition, MRG-7200, 7737 Hampton Boulevard, Building 19, Suite 300  
 Norfolk, VA 23505  
 CODE 00092

17a. CONTRACTOR/OFFEROR ATLANTIC TRACTORS & EQUIPMENT LIMITED  
 175 AKERLEY BLVD  
 DARTMOUTH, NS B3B -3Z6  
 TELEPHONE NO.(902) 468-0581 ext.

18a. PAYMENT WILL BE MADE BY DOT/ Enterprise Services Center (ESC) OFO/FAA, Oklahoma City  
 MARAD A/P Branch, AMZ-150 PO Box 25710  
 Oklahoma City, OK 73125  
 CODE AMZ150

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  SEE ADDENDUM

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

25. ACCOUNTING AND APPROPRIATION DATA See Line Item Detail

26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$ 78,725.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN \_\_\_\_\_ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

29. AWARD OF CONTRACT: REF. \_\_\_\_\_ OFFER  DATED \_\_\_\_\_. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)  
*Laurel Bishop*

30b. NAME AND TITLE OF SIGNER (Type or print) 30c. DATE SIGNED 31b. NAME OF CONTRACTING OFFICER 31c. DATE SIGNED  
 Laurel Bishop 11/30/2009

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

32a. QUANTITY IN COLUMN 21 HAS BEEN

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

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

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY <i>(Print)</i>
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT <i>(Location)</i>
	42c. DATE REC'D <i>(YY/MM/DD)</i>
	42d. TOTAL CONTAINERS

<b>Line Item Summary</b>	<b>Document Number</b> DTMA2P10013	<b>Title</b> SOM SSDG3 INSPECT PH2	<b>Page</b> 3 of 18
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**Total Funding:** \$78,725.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
2010	X1750	SMR 120	SM	B107	0	0000	160000				
<b>Division</b>	<b>Closed FYs</b>		<b>Cancelled Fund</b>								
25711	6100	6600									

Line Item Number	Description	CLIN Ref	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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0001	PROVIDE SUPERINTENDANT SERVICES	0001	12/15/2009	1.00	JOB	\$13,000.000	\$ 13,000.00
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(12/03/2009 to 12/22/2009)

PROVIDE AN MAK CERTIFIED SUPERINTENDANT IN ACCORDANCE WITH THE ATTACHED STATEMENT OF WORK.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$13,000.00

0002	BLOCK CHECKS AND MACHINING CHECKS	0002	12/15/2009	1.00	JOB	\$45,000.000	\$ 45,000.00
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(12/03/2009 to 12/22/2009)

PERFORM BLOCK CHECKS AND MACHINING IN ACCORDANCE WITH THE ATTACHED STATEMENT OF WORK.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$45,000.00

0003	RIGGING SERVICE	0003	12/15/2009	1.00	JOB	\$10,000.000	\$ 10,000.00
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(12/03/2009 to 12/22/2009)

PROVIDE RIGGING SERVICE IN ACCORDANCE WITH THE ATTACHED STATEMENT OF WORK.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$10,000.00

<b>Line Item Summary</b>	<b>Document Number</b> DTMA2P10013	<b>Title</b> SOM SSDG3 INSPECT PH2	<b>Page</b> 4 of 18
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**Total Funding:** \$78,725.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
2010	X1750	SMR 120	SM	B107	0	0000	160000				
<b>Division</b>	<b>Closed FYs</b>	<b>Cancelled Fund</b>									
25711	6100 6600										

Line Item Number	Description	CLIN Ref	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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0004	FREIGHT	0004	12/15/2009	1.00	JOB	\$4,000.000	\$ 4,000.00
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(12/03/2009 to 12/22/2009)

TRANSPORT THE CRANKSHAFT TO THE CONTRACTOR'S FACILITY IIN ACCORDANCE WITH THE ATTACHED STATEMENT OF WORK.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$4,000.00

0005	CRANKSHAFT INSPECTION	0005	12/15/2009	1.00	JOB	\$1,725.000	\$ 1,725.00
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(12/03/2009 to 12/22/2009)

INSPECT THE CRANKSHAFT AT THE CONTRACTOR'S FACILITY IN ACCORDANCE WITH THE ATTACHED STATEMENT OF WORK.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$1,725.00

0006	SUPPLEMENTAL LABOR	0006	12/15/2009	1.00	JOB	\$5,000.000	\$ 5,000.00
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(12/03/2009 to 12/22/2009)

PROVIDE SUPPLEMENTAL LABOR, IF AUTHORIZED, IN ACCORDANCE WITH THE ATTACHED SOW.

Ref Req No: PRSAR100072/0001

Funding Information:

2010 - - X1750 - SMR 120 - SM - B107 - 0 - 0000 - 160000 - - - -  
 - 25711 - 6100 - 6600 -  
 \$5,000.00

**Total Cost:** \$78,725.00

**Address Detail****Title**  
SOM SSDG3 INSPECT PH2**Document Number**  
DTMA2P10013**Page**  
5 of 18**Shipping Addresses**

<b>Code</b>	<b>Detail</b>	<b>Code</b>	<b>Detail</b>
0001	<b>Org:</b> DOT/Maritime Administration, Atlantic Division Of <b>Addr:</b> STATE OF MAINE Maine Maritime Academy  Castine ME 04420 <b>Attn:</b> Joe Poltrack <b>Phone:</b> (207) 326-2421 ext. <b>Fax:</b> (207) 326-2121 ext.	0002	<b>Org:</b> DOT/Maritime Administration, South Atlantic Regio <b>Addr:</b> STATE OF MAINE Maine Maritime Academy  Castine ME 04420 <b>Attn:</b> Joe Poltrack <b>Phone:</b> (207) 326-2421 ext. <b>Fax:</b> (207) 326-2131 ext.

**Invoice Addresses**

<b>Code</b>	<b>Detail</b>
0001	<b>Org:</b> DOT/ Enterprise Services Center (ESC) OFO/FAA, <b>Addr:</b> MARAD A/P Branch, AMZ-150 PO Box 25710  Oklahoma City OK 73125 <b>Attn:</b> Christy Remington, Accounting Technician <b>Phone:</b> (405) 954-1693 ext. <b>Fax:</b> (405) 954-1270 ext.

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COMMERCIAL CLAUSES

1 MAINE DEPT OF LABOR MINIMUM WAGE DETERMINATION

**The Contractor's attention is drawn to Wage Determination (WD) 05-2241 Revision 6, last posted 25 March 2008 at: [www.wdol.gov](http://www.wdol.gov) . It is the Contractor's responsibility to comply with these minimum wages.**

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2 STATEMENT OF WORK

STATEMENT OF WORK

Title: TS State of Maine - SSDG #3 Open and Inspect, Phase II

Background and Intent: The Training Ship State of Maine's MAK, Model 6M 332, Ship's Service Diesel Generator experienced an engine overspeed. An MAK "Superintendent" performed a preliminary check of the engine and determined that the crank shaft needs to go out for inspection and that the block needs to be checked for alignment of the bearing bore and re- machined. These repairs are due to a main bearing which spun in the housing. In addition, numerous other items remain to be checked. It is the intent of this SOW to complete a thorough inspection of the engine, block, crankshaft and all other components to determine the full extent of damage and the cost for repair and/or replacement. In addition, it is the intent of this SOW to repair the damage to the engine block.

Location: The Training Ship State of Maine is berthed at her pier at the Maine Maritime Academy, 1 Water Street, Castine, ME 04420.

Performance Period: Work shall begin 3 December through 22 December 2009.

Work Description:

The Contractor shall provide a certified MAK Superintendent to rig the engine block into position for in-place machining and to remove the crankshaft for repair at the Contractor's facility. The ship's cranes can be used to assist in the placement of the crank on the pier. The cranes shall be operated by ship's crew.

The Contractor shall also perform an onboard bearing bore alignment inspection and in-place machining of the block to correct for the damage which occurred from the spun bearing. The inspections and repairs associated with the block shall be in accordance with the requirements of the USCG (U.S. Coast Guard), ABS (American Bureau of Shipping) and the OEM (original equipment manufacturer). A report detailing all inspections and repair of the block shall be submitted to the COTR/Port Engineer in pdf format and shall include all information required to satisfy the USCG and ABS.

The Contractor shall remove and transport the crankshaft to the pier alongside the ship and deliver it to an MAK authorized repair shop for inspection and assessment to include a report detailing all findings, recommendations and estimated costs to repair. The degree of inspection and the recommendations for repair must be to the satisfaction of the USCG (U.S. Coast Guard), ABS (American Bureau of Shipping) and the OEM (original equipment manufacturer).

Numerous other remaining parts not identified above (except for the turbocharger) will need to be disassembled and checked to determine if they can be re-used or need to be replaced. The Contractor shall provide a certified MAK Superintendent to

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disassemble and inspect these parts and to recommend re-use or replacement depending upon the most economical choice. Where these parts cannot be properly inspected aboard the ship, the Contractor shall provide transport to the Contractors facility.

All blocking and/or support cradles required to ensure proper support of the crankshaft following removal and during shipment shall be the responsibility of the Contractor.

**CLIN 0001 - Provide Superintendent Services:** Contractor shall provide an MAK certified Superintendent to accomplish the statement of work above based on working a 7 day per week, 12 hour day at the rates provided in Atlantic Tractor's letter entitled "US Labor Rates & Terms in Effect as of January 1, 2009".

The total charge for these services (to include travel and per diem) shall not exceed \$13,000.00 without prior authorization via a change order issued by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR).

Invoicing for this CLIN shall reflect actual hours worked and expenses incurred up to the maximum travel and per diem rates permitted by the Federal Government.

**CLIN 0002 - Perform Block Checks and Machining:** The Contractor shall provide the services of a recognized in-place machining company to perform a bearing bore alignment check and in-place machining of the block to repair the damage caused by the spun main bearing. Contractor shall provide a daily rate for this service based on working a 7 day per week, 12 hour day.

The total charge for these services shall not exceed \$45,000.00 without prior authorization via a change order issued by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR). This cost shall include all travel and per diem.

Invoicing for this CLIN shall reflect actual hours worked to include expenses incurred up to the maximum travel and per diem rates permitted by the Federal Government.

**CLIN 0003 - Rigging:** The Contractor shall provide the services of a company capable of providing certified lifting gear and riggers to assist with the removal of the crankshaft to the pier. Contractor shall provide a daily rate for this service based on working a 7 day per week, 12 hour day.

The total charge for these services shall not exceed \$10,000.00 without prior authorization via a change order issued by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR). Travel and per diem will NOT be covered for these services (as local riggers are available).

**Invoicing for this CLIN shall reflect actual hours worked, and actual hours must be provided to the COTR prior to invoicing.**

**CLIN 0004 - Freight:** The Contractor shall transport the crankshaft to their facility for the purposes of conducting a thorough inspection. The Contractor shall provide an estimated cost for transport of the crankshaft and other parts to the Contractor's facility (one way).

The total charge for this service shall not exceed \$4,000.00 without prior authorization via a change order issued by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR).

**Invoicing for this CLIN shall reflect actual costs billed by the freight company. As soon as actual shipping charges are determined, this figure shall be provided to the COTR for approval and final invoicing.**

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**CLIN 0005 - Crankshaft Inspection:** Once at the Contractor's facility, the Contractor shall perform a thorough inspection of the crankshaft in accordance with all requirements of the USCG and ABS to include recommendations for repair or replacement. The cost for this service shall be at the Contractor's quoted price of \$1,725.00.

**CLIN 0006 - Supplemental Labor:** Supplemental labor, if necessary, shall only be authorized by the Contracting Officer (CO) if over \$10,000 or issued by the Contracting Officer's Technical Representative (COTR) if under \$10,000, using the rates provided in CLIN 0001, CLIN 0002 or CLIN 0003 as appropriate for the work being done. No other party but the CO or COTR may task changes to this SOW. An amount of \$5,000.00 shall be available, if authorized, on this SOW.

<b>CLIN #</b>	<b>DESCRIPTION</b>	<b>CONTRACTOR'S QUOTED RATE</b>	<b>NOTE</b>
<b>CLIN 0001</b>	<b>PROVIDE SUPERINTENDANT</b>		AS PER ATLANTIC TRACTOR US LABOR RATES & TERMS, JAN 1, 2009 PLUS TRAVEL & PER DIEM TOTAL NOT TO EXCEED \$13,000 WITHOUT WRITTEN AUTHORIZATION
<b>CLIN 0002</b>	<b>PERFORM BLOCK CHECKS &amp; MACHINING</b>		THIS IS A DAILY RATE WHICH INCLUDES TRAVEL AND PER DIEM.. TOTAL NOT TO EXCEED \$45,000 WITHOUT WRITTEN AUTHORIZATION
<b>CLIN 0003</b>	<b>RIGGING</b>		THIS IS A DAILY RATE. TOTAL NOT TO EXCEED \$10,000 WITHOUT WRITTEN AUTHORIZATION
<b>CLIN 0004</b>	<b>FREIGHT</b>		THIS IS AN ESTIMATED COST. TOTAL SHALL NOT EXCEED \$4,000 WITHOUT WRITTEN AUTHORIZATION.
<b>CLIN 0005</b>	<b>SUPPLEMENTAL LABOR</b>	\$5,000	

### 3 INVOICE INSTRUCTIONS

#### INVOICE SUBMISSION - MARAD Division of Atlantic Operations (DAO)

The Contractor may submit invoices in either electronic or paper format. Electronic submission is preferred.

- (1) Electronic invoices shall be addressed to [MARADInvoices@faa.gov](mailto:MARADInvoices@faa.gov), with copy to [MARADSARInvoices@dot.gov](mailto:MARADSARInvoices@dot.gov)

Electronic invoices shall conform to the following criteria, or be subject to rejection:

- a. Invoice and supporting documentation shall be in Adobe Acrobat (pdf) format.
- b. The e-mail subject shall include the contract/purchase order number and invoice number.
- c. The transmitting e-mail shall include the following information: Name of the Contractor; Invoice date and number; Invoice amount; Contract number and, if applicable, the order or modification number; Terms of any discount for prompt payment offered; Payment instructions (i.e., financial institution, ABA routing #, account #)

- (2) Paper invoices shall be submitted to one of the following addresses. Multiple copies are not required.

MARAD A/P SAR Invoices Branch  
AMZ-150  
PO Box 25710  
Oklahoma City, OK 73125

If a street address is required for delivery (i.e., Federal Express), the following address may be used in lieu of the post office box:

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MARAD A/P SAR Invoices Branch  
AMZ-150  
6500 S MacArthur Blvd.  
Oklahoma City, OK 73169

4      52.212-04      CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS      MARCH  
2009

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

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

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

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

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

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

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

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

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;

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- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

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

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

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

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

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

(i) Payment.-(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

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

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

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

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

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

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments,

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including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

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

5      52.212-05      **CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-- COMMERCIAL ITEMS**      **SEPTEMBER 2009**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_ (12) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

\_\_\_ (13) 52.219-16, Liquidated Damages—Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_\_ (14)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

\_\_\_ (ii) Alternate I (June 2003) of 52.219-23.

\_\_\_ (15) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (16) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (17) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).

\_\_\_ (18) 52.219-28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 632(a)(2)).

X\_\_\_ (19) 52.222-03, Convict Labor (June 2003) (E.O. 11755).

X\_\_\_ (20) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (AUG 2009) (E.O. 13126).

X\_\_\_ (21) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

X\_\_\_ (22) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

X\_\_\_ (23) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) (38 U.S.C. 4212).

X\_\_\_ (24) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

\_\_\_ (25) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) (38 U.S.C. 4212).

\_\_\_ (26) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

\_\_\_ (27) 52.222-54, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

\_\_\_ (28)(i) 52.223-09, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).

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\_\_\_ (ii) Alternate I (MAY 2008) of 52.223-09 (42 U.S.C. 6962(i)(2)(C)).

\_\_\_ (29) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).

\_\_\_(30)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

\_\_\_(ii) Alternate I (DEC 2007) of 52.223-16.

\_\_\_ (31) 52.225-01, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).

\_\_\_ (32)(i)52.225-03, Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138.

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

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

\_\_\_ (33) 52.225-05, Trade Agreements (AUG 2009) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

\_\_\_ (34) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O's, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (35) 52.226-04, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).

\_\_\_ (36) 52.226-05, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

\_\_\_ (37) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_ (38) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X\_\_\_ (39) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

\_\_\_ (40) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

\_\_\_ (41) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

\_\_\_ (42) 52.239-01, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_ (43)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) [Reserved]

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

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

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

(vii) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

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

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

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

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

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

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

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

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

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

(End of Clause)