

NATIONAL STEEL AND SHIPBUILDING COMPANY

MILITARY SHIP REPAIR PROGRAMS

PURCHASE ORDER

SPECIAL TERMS AND CONDITIONS

FOR BAE SAN DIEGO IN SUPPORT OF CONTRACT N0024-11-C-4408

DDG PROGRAM

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PART A: PRIME CONTRACT CLAUSES

The following clauses are flowed down pursuant to the requirements of the Prime Contract. Additional clauses and requirements may apply as contained in BAE's prime contract as explained below.

Buyer's purchase order and contract with BAE contains the following clause, which places responsibility on Buyer and Seller and all of their subcontractors to be completely familiar with BAE's prime contract. BAE's subcontract terms under BAE Form SK 1284 in Section 3 is flowed down verbatim from NASSCO to Seller and its subcontractors. For purposes of this clause only and the attachments A through M reference in the section called "Incorporated Provisions": (a) "Buyer" refers to BAE, (b) "Order" refers to BAE's purchase order with NASSCO, (c) "Seller" means NASSCO and its subcontractors, including your company and its lower tier subcontractors.

Section 3: "If the face of an Order includes identification of a prime contract, the goods and services (or both) ordered are procured in furtherance of Buyer's performance of Buyer's prime contract with its customer. Such prime contracts may include, but are not limited to Job Orders issued under Buyer's Master Agreement for Repair and Alterations of Vessels with agencies of the United States Government. If an Order includes identification of a prime contract, drawings or specifications, or both, such references are intended to reflect the requirements of Buyer's prime contract, and it shall be the responsibility of Seller to assure that it is familiar with and strictly complies with all prime contract requirements."

NASSCO's purchase order from BAE identifies a prime contract and the work is in support of BAE's prime contract. NASSCO was not provided specific flow-downs from BAE under BAE's Order. NASSCO was provided BAE's entire prime contract, and NASSCO will make the entire prime contract available to your company, too.

NASSCO has prepared a partial extract of clauses from the prime contract and BAE's Form SK 1284 for your convenience. The clauses appear verbatim as they were given to NASSCO, unless the clause bears a note that the clause was modified by NASSCO. By no means shall this extract be a substitute for your company familiarizing itself with all of the prime contract requirements in accordance with the Section 3 verbiage set forth above.

1. ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE (NAVSEA) (JUN 1994)

(a) Performance under this contract may require that the Contractor have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In

addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).

(b) The Contractor agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.

(c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.

(d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.

(e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.

(f) Compliance with this requirement is a material requirement of this contract.

2. ACCESS TO THE NAVY SUPPLY SYSTEM (NAVSEA) (JAN 2008) (THIS CLAUSE MAY BE FLOWED DOWN TO SUBCONTRACTORS)

(a) In compliance with the comparability requirement of 10 U.S.C. 7314, Public and Private Shipyards will be provided equal access to the Naval Supply System. Use by private yards is permissive, not mandatory. Use of the supply system shall be in accordance with technical specification entitled "ACCESS TO THE FEDERAL SUPPLY SYSTEM BY SHIP REPAIR CONTRACTING FOR CONTRACTOR-FURNISHED MATERIAL WITH NATIONAL STOCK NUMBERS", dated 30 October 1989 (Draft).

(b) Pursuant to the clause of this contract entitled "GOVERNMENT SUPPLY SOURCES" (FAR 52.251-1) the Contracting Officer hereby authorizes the Contractor to place orders with the Navy Supply System for materials and equipment or other supplies necessary to perform the required work. The Naval Supply System shall process such orders in the same manner as it would for any other Navy supply user, and the Contractor shall make payment on account of materials and equipment and other supplies ordered and/or received in accordance with the normal requirements of the Naval Supply Systems Command, but in no event shall payment in full be any later than 30 days after receipt by the Contractor of

each order. The Contractor shall pay the Naval Supply System any costs for materials, equipments, or other supplies obtained including any surcharges normally charged to any other Naval Supply System user. Contractors shall place orders in accordance with the Technical Specification identified in paragraph (a) above.

(c) This job order has been priced on the basis that, except as specifically provided elsewhere in this contract with regards to Government furnished property, the Contractor shall provide all necessary materials, equipments and supplies for performance of this contract. If the Contractor uses the Naval Supply System, it has elected to use the system for its own convenience to meet its contractual obligations to perform the work under this contract. The Naval Supply System is considered to be an alternate source or vendor of contractor furnished material; therefore materials, equipments, or other supplies ordered and/or obtained from the Naval Supply System are specifically not considered to be Government furnished material, but are considered to be contractor furnished material. The Government makes no representation as to the availability of materials, equipments, or other supplies for the performance of the work required under this contract, nor shall unavailability, late delivery, delivery of non-conforming supplies, higher costs of the Naval Supply System (if any), or any failure of the Naval Supply System to meet the expectations or requirements of the Contractor constitute excusable delay or grounds for equitable or any other adjustment to the contract or relief from the requirement to perform in accordance with the terms of the contract.

3. 5252.202-9101 ADDITIONAL DEFINITIONS (MAY 1993)

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

(a) DEPARTMENT means the Department of the Navy.

(b) REFERENCES TO THE FEDERAL ACQUISITION REGULATION (FAR). All references to the FAR in this contract shall be deemed to also reference the appropriate sections of the Defense FAR Supplement (DFARS), unless clearly indicated otherwise.

(c) REFERENCES TO ARMED SERVICES PROCUREMENT REGULATION OR DEFENSE ACQUISITION REGULATION. All references in this document to either the Armed Services Procurement Regulation (ASPR) or the Defense Acquisition Regulation (DAR) shall be deemed to be references to the appropriate sections of the FAR/DFARS.

(d) NATIONAL STOCK NUMBERS. Whenever the term Federal Item Identification and its acronym FIIN or the term Federal Stock Number and its acronym FSN appear in the contract, order or their cited specifications and standards, the terms and acronyms shall be interpreted as National Item Identification Number (NIIN) and National Stock Number (NSN) respectively which shall be defined as follows:

(1) National Item Identification Number (NIIN). The number assigned to each approved Item Identification under the Federal Cataloging Program. It consists of nine numeric characters, the first two of which are the National Codification Bureau (NCB) Code. The remaining positions consist of a seven digit non-significant number.

(2) National Stock Number (NSN). The National Stock Number (NSN) for an item of

supply consists of the applicable four positions Supply Class (FSC) plus the applicable nine positions NIIN assigned to the item of supply.

4. ADDITIONAL PROVISIONS RELATING TO CORRECTION OF DEFECTS (NAVSEA) (OCT 1990)

In case any work done or materials or supplies furnished by the Contractor under this Contract for any vessel, or the equipment thereof, shall within sixty (60) days of delivery of the vessel to the Government, or the date of final acceptance, whichever occurs first, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected or repaired by the Contractor to the satisfaction of the Contracting Officer; provided, however, that with respect to any individual work item which is incomplete or deficient at the time of delivery or acceptance, the Contractor's obligation under this requirement to correct or repair such deficiency shall extend sixty (60) days from the date of such correction or repair, whichever occurs first. The Contractor shall be entitled to allowable costs for corrections or repairs performed in accordance with this requirement but shall not be entitled to any additional fee for such work.

5. 5252.249-9105 AWARD FEE DETERMINATION IN THE EVENT OF TERMINATION OR DISCONTINUANCE (CA) (JAN 1990)

In the event that this contract is terminated in whole or pursuant to the contract clause entitled "TERMINATION (COST-REIMBURSEMENT)" (FAR 52.249-6) or in the event this contract is discontinued pursuant to the contract clause entitled "LIMITATION OF COST" (FAR 52.232-20), the last award fee period shall end with the effective date of such termination or discontinuance. In either of such events, the amount of award fee, if any, determined to be otherwise payable shall be adjusted or prorated to reflect the difference, if any, in award fee periods resulting from termination or discontinuance.

6. 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

- (a) The Contractor shall—
 - (1) Certify any proposal to establish or modify final indirect cost rates;
 - (2) Use the format in paragraph (c) of this clause to certify; and
 - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate as described in this clause may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of

my knowledge and belief: 1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and 2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

7. SS C-2-0024 CITIZENSHIP REQUIREMENTS

The Contractor shall comply with the Department of Defense Industrial Security Manual (DoD 5220.22), and any revisions to that manual as of the Bid Opening Date prescribed, for verification of all U.S. Citizens. Prospective offerors shall refer all questions pertaining to the above Southwest Regional Maintenance Center (SWRMC) Security Manager, Mr. Bob Sablan, at (619) 556-2820.

8. 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JULY 2005)

(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.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll

records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(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.

9. COSAL CONFIGURATION CHANGE DOCUMENTATION (NAVSEA) (JUN 1992)

The Contractor shall document all changes to the ship's configuration and prepare all documentation require to bring the ship's COSAL and SPCC Weapons Systems Files (WSF) into agreement with the actual end of availability configuration. Perform COSAL/WSF maintenance action on all planned and actual equipments/components/equipage, whether furnished by the Government or the Contractor.

10. 52.222-3 CONVICT LABOR (JUN 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence.

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

11. 5252.233-9103 DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (APR 1999)

(a) For the purposes of this special contract requirement, the term “change” includes not only a change that is made pursuant to a written order designated as a “change order” but also (1) an engineering change proposed by the Government or by the Contractor and (2) any act or omission to act on the part of the Government in respect of which a request is made for equitable adjustment.

(b) Whenever the Contractor requests or proposes an equitable adjustment of \$100,000 or more per vessel in respect to a change made pursuant to a written order designated as a “change order” or in respect to a proposed engineering change and whenever the Contractor requests an equitable adjustment in any amount in respect to any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description (i) of the work required by the contract before the change, which has been deleted by the change, and (ii) of the work deleted by the change which already has been completed. The description is to include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property is to be indicated. Separate description is to be furnished for design and production work. Items of raw material, purchased parts, components and other identifiable hardware, which are made excess by the change and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) Description of work necessary to undo work already completed which has been deleted by the change;

(3) Description of work not required by the terms hereof before the change, which is substituted or added by the change. A list of components and equipment (not bulk materials or items) involved should be included. Separate descriptions are to be furnished for design work and production work;

- (4) Description of interference and inefficiencies in performing the change;
- (5) Description of each element of disruption and exactly how work has been, or will be disrupted:
 - (i) The calendar period of time during which disruption occurred, or will occur;
 - (ii) Area(s) aboard the vessel where disruption occurred, or will occur;
 - (iii) Trade(s) disrupted, with a breakdown of man-hours for each trade;
 - (iv) Scheduling of trades before, during, and after period of disruption; and
 - (v) Description of measures taken to lessen the disruptive effect of the change;
- (6) Delay in delivery attributable solely to the change;
- (7) Other work attributable to the change;
- (8) Supplementing the foregoing, a narrative statement of the direct “causal” relationship between any alleged Government act or omission and the claimed consequences therefor, cross referenced to the detailed information provided as required above; and
- (9) A statement setting forth a comparative enumeration of the amounts “budgeted” for the cost elements, including the material costs, labor hours and pertinent indirect costs, estimated by the Contractor in preparing its initial and ultimate proposal(s) for this contract, and the amounts claimed to have been incurred and/or projected to be incurred corresponding to each such “budgeted cost” elements.

(c) Each proposal in excess of \$100,000 submitted in support of a claim for equitable adjustment under any requirement of this contract shall, in addition to the information required by paragraph (b) hereof, contain such information as the Contracting Officer may require with respect to each individual claim item.

(d) It is recognized that individual claims for equitable adjustment may not include all of the factors listed in paragraph (b) above. Accordingly, the Contractor is required to set forth in its proposal information only with respect to those factors which are comprehended in the individual claim for equitable adjustment. In any event the information furnished hereunder shall be in sufficient detail to permit the Contracting Officer to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, submitted pursuant to paragraph (c) of this requirement, with the information submitted pursuant to paragraph (b) hereof.

12. 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

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

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

- (1) Means any item of supply that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

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

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

- (3) Normally performs support work, such as indirect or overhead functions; and
- (4) Does not perform any substantial duties applicable to the contract.

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

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

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

(b) Enrollment and Verification Requirements.

(5) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

- (i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
- (ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility

of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

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

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

(i) All new employees.

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

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

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

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

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

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

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

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

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web Site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals Previously Verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(i) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(ii) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(iii) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(i) Is for—

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

(B) Construction;

- (2) Has a value of more than \$3,000; and
- (3) Includes work performed in the United States.

13. 5252.233-9107 EQUITABLE ADJUSTMENTS; WAIVER AND RELEASE OF CLAIMS (AT) (JAN 1983)

(a) Whenever the Contractor, after receipt of a change made pursuant to the clause of this contract entitled "CHANGES" or after affirmation of a constructive change under the "NOTIFICATION OF CHANGES (FAR 52.243-7) requirement, submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle the Contractor, including but not limited to, adjustments arising out of the delays or disruptions or both caused by such change.

(b) Further, the Contractor agrees (except as the parties may otherwise agree) that, if required by the Contracting Officer, it will execute a release, in form and substance satisfactory to the Contracting Officer, as part of the supplemental agreement setting forth the aforesaid equitable adjustment, and that such release shall discharge the Government, its officers, agents and employees, from any further claims, including but not limited to further claims arising out of delays or disruptions or both, caused by the aforesaid change.

14. EXCLUSION OF MERCURY (NAVSEA)(MAY 1993)

Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this contract.

15. EXTENSION OF COMMERCIAL WARRANTY (NAVSEA) (NOV 1996)

The Contractor shall extend to the Government the full coverage of any standard commercial warranty normally offered in a similar commercial sale, provided that such warranty is available at no additional cost to the Government. The Contractor shall provide a copy of the standard commercial warranty with the item. The standard commercial warranty period shall begin upon the final acceptance of the applicable material or software. Acceptance of the standard commercial warranty does not waive the Government's rights under the "Inspection" clause, nor does it limit the Government's rights with regard to other terms and conditions of the contract. In the event of a conflict, the terms and conditions of the contract shall take precedence over the standard commercial warranty.

16. FACILITIES NOT TO BE GOVERNMENT FURNISHED (CT) (NAVSEA) (JAN 1990)

The Contractor's obligation to perform this contract is in no way conditioned upon the providing by the Government of any facilities, except as may be otherwise expressly provided herein. Accordingly, no such facilities shall be either acquired by the Contractor for the account of the Government or furnished to the Contractor by the Government hereunder. For the purpose of this requirement, facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development or test, including real property and rights therein, buildings,

structures, improvements, and plant equipment as defined in FAR 45.101 and 45.301 and DFARS 245.301.

17. 5252.227-9113 GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (OCT 2006)

(a) The Contractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with the NAVSEA S0300-BU-GYD-010 dated November 1994. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve the Contractor from complying with any other requirement of the contract.

(b) The Contractor agrees to insert paragraph (a) of the requirement in any subcontract hereunder exceeding \$500,000.00. When so inserted, the word "Contractor" shall be changed to "Subcontractor."

(c) GIDEP materials, software and information are available without any charge from:

GIDEP
P.O. Box 8000
Corona, CA 92878-8000

Phone: (951) 898-3207
FAX: (951) 898-3250
Internet: <http://www.gidep.org>

18. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(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 If none, insert "None"	Identification No.
_____	_____
_____	_____

(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 non-responsible and ineligible for award.

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

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

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

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

(i) 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.

(1) 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 rights in data.

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

19. NAVSEA 5252.217-9121 INDEMNIFICATION FOR ACCESS TO VESSEL (MAY 1989)

Notwithstanding any provision in the "ACCESS to VESSEL" clause (DFARS 252.217-7011), or any other clause of the contract, the Contractor agrees to allow officers, employees, and associates of the Government, or other prime contractors with the Government and their subcontractors, and officers, employees, and associates of offerors on other contemplated work, admission to the Contractor's facilities and access to the vessel without any further request for indemnification from any party, which has not been

previously included in the contract price.

20. 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)

(a) Definitions.

“Title III industrial resource” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

“Title III project contractor” means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

21. 252.211-7003 ITEM IDENTIFICATION AND VALUATION (AUG 2008)

(a) Definitions. As used in this clause—

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at http://www.acq.osd.mil/dpap/pdi/uid/iuid_equivalents.html.

DoD unique item identification means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

Enterprise means the entity (e.g., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

Government's unit acquisition cost means—

(1) For fixed-price type line, sub-line, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, sub-line, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery.

Issuing agency means an organization responsible for assigning a non-repeatable identifier to an enterprise (i.e., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

Issuing agency code means a code that designates the registration (or controlling) authority for the enterprise identifier.

Item means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

Lot or batch number means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

Machine-readable means an automatic identification technology media, such as bar codes, contact

memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

Parent item means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

Serial number within the enterprise identifier means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part, lot, or batch number means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part, lot, or batch number means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

Unique item identifier means a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at http://www.acq.osd.mil/dpap/pdi/uid/uii_types.html.

- (b) The Contractor shall deliver all items under a contract line, sub-line, or exhibit line item.
- (c) Unique item identifier.
 - (1) The Contractor shall provide a unique item identifier for the following:
 - (i) All delivered items for which the Government's unit acquisition cost is \$5,000 or more.

(ii) The following items for which the Government's unit acquisition cost is less than \$5,000:

Contract Line, Subline, or _____

Exhibit Line Item Number	Item Description
--------------------------	------------------

(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number ____.

(2) The unique item identifier and the component data elements of the DoD unique item identification shall not change over the life of the item.

(3) Data syntax and semantics of unique item identifiers. The Contractor shall ensure that—

(i) The encoded data elements (except issuing agency code) of the unique item identifier are marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology – EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology – EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology – Transfer Syntax for High Capacity Automatic Data Capture Media.

(4) Unique item identifier.

- (i) The Contractor shall—
- (A) Determine whether to—
- Serialize within the enterprise identifier;
 - Serialize within the part, lot, or batch number; or
 - Use a DoD recognized unique identification equivalent;
- and
- (B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in the version of MIL-STD-130, Identification Marking of U.S. Military Property, cited in the contract Schedule.
- (ii) The issuing agency code—
- (A) Shall not be placed on the item; and
- (B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires unique item identification under paragraph (c)(1)(i) or (ii) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, either as part of, or associated with, the Material Inspection and Receiving Report, the following information:

- (1) Unique item identifier.
- (2) Unique item identifier type.
- (3) Issuing agency code (if concatenated unique item identifier is used).
- (4) Enterprise identifier (if concatenated unique item identifier is used).
- (5) Original part number (if there is serialization within the original part number).
- (6) Lot or batch number (if there is serialization within the lot or batch number).
- (7) Current part number (optional and only if not the same as the original part number).
- (8) Current part number effective date (optional and only if current part number is used).

- (9) Serial number (if concatenated unique item identifier is used).
- (10) Government's unit acquisition cost.
- (11) Unit of measure.

(e) For embedded subassemblies, components, and parts that require DoD unique item identification under paragraph (c)(1)(iii) of this clause, the Contractor shall report as part of, or associated with, the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

- (1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.
- (2) Unique item identifier of the embedded subassembly, component, or part.
- (3) Unique item identifier type.**
- (4) Issuing agency code (if concatenated unique item identifier is used).**
- (5) Enterprise identifier (if concatenated unique item identifier is used).**
- (6) Original part number (if there is serialization within the original part number).**
- (7) Lot or batch number (if there is serialization within the lot or batch number).**
- (8) Current part number (optional and only if not the same as the original part number).**
- (9) Current part number effective date (optional and only if current part number is used).**
- (10) Serial number (if concatenated unique item identifier is used).**
- (11) Description.

**Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html.

(g) Subcontracts. If the Contractor acquires by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s).

22. 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars, or if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of a fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all of the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (d) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

23. 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

24. 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing

either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

25. 5252.243-9105 NOTIFICATION OF CHANGES (CT) (JAN 1983)

(a) Definitions. As used in this requirement, the term “Contracting Officer” does not include any representative of the Contracting Officer whether or not such representative is acting within the scope of his authority nor does it include any other individuals or activities that in any way communicate with the Contractor. As used in this requirement, the term “conduct” includes both actions and failures to act, and includes the furnishing of, or the failure to furnish, any item under any requirement of this contract.

(b) Notice. The primary purpose of this requirement is to obtain prompt reporting of any conduct which the Contractor considers would constitute or would require a change to this contract. The parties acknowledge that proper administration of this contract requires that potential changes be identified and resolved as they arise. Therefore, except for changes identified as such in writing and signed by the

Contracting Officer, the Contractor shall notify the Contracting Officer of any conduct which the Contractor considers would constitute or would require a change to this contract. Such notice shall be provided promptly and in any event within thirty (30) calendar days from the date the Contractor identifies any such conduct. The Notice shall be written and shall state, on the basis of the most accurate information available to the Contractor:

- (i) The date, nature, and circumstances of the conduct regarded as a change;
- (ii) The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;
- (iii) The identification of any documents and the substance of any oral communication involved in such conduct;
- (iv) The particular elements of contract performance for which the Contractor might seek an equitable adjustment under this requirement, including:
 - (1) What ship(s) have been or might be affected by the potential change;
 - (2) To the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
 - (3) To the extent practicable, the Contractor's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
 - (4) What and in what manner are the particular technical requirements or contract requirements regarded as changed.

(c) Continued Performance. Except as provided in paragraph (f) below, following submission of notice, the Contractor shall take no action to implement a potential change until advised by the Contracting Officer in writing as provided in (d) below, unless the potential change was previously directed by the Contracting Officer, in which case the Contractor shall conform therewith. Nothing in this paragraph (c) shall excuse the Contractor from proceeding with contract work other than implementation of the potential change or from proceeding in accordance with directions issued by the Contracting Officer.

(d) Government Response. The Contracting Officer shall promptly, and in any event within twenty one (21) calendar days after receipt of Notice, respond thereto in writing. In such response, the Contracting Officer shall either:

- (i) Confirm that the conduct of which the Contractor gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
- (ii) Countermand any conduct regarded by the Contractor as a change, or;
- (iii) Deny that the conduct of which the Contractor gave notice would constitute a change and, when necessary, direct the mode of further performance, or;

(iv) In the event the Contractor's notice information is inadequate to make a decision under (i), (ii), or (iii), above, advise the Contractor what additional information is required. Failure of the Government to respond within the time required above shall be deemed a countermand under (d)(ii).

(e) Equitable Adjustments. Equitable adjustments for changes confirmed or countermanded by the Contracting Officer shall be made in accordance with the clause of this contract entitled "CHANGES", or any other requirement of this contract which provides for an equitable adjustment.

(f) Special Procedures. Paragraph (c) provides that the Contractor is to take no action to implement a potential change pending the Contracting Officer's response to the Contractor's notice of the potential change, except where specifically directed by the Contracting Officer. In special situations, however, where

(1) The circumstances do not allow sufficient time to notify the Contracting Officer of the facts prior to the need to proceed with the work; and

(2) The work must proceed to avoid hazards to personnel or property or to avoid additional cost to the Government, the Contractor may proceed with work in accordance with the potential change. In such special situations, the Contractor shall advise the Contracting Officer in writing within ten (10) days of the conduct giving rise to the potential change that the Contractor has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within thirty (30) calendar days of the conduct giving rise to the potential change, the Contractor shall provide notice as required in (b) above. The Contracting Office shall respond as set forth in (d) above. If the Contracting Officer determines that the conduct constitutes a change and countermands it, the Contractor shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including the performance resulting from the countermand.

(g) When the Contractor identifies any conduct which may result in delay to delivery of the ship(s), the Contractor shall promptly so inform the Contracting Officer thereof prior to providing the notice required by paragraph (b) above.

(h) Despite good faith best efforts, occasions may arise in which the Contractor does not provide notice within the time periods specified in paragraphs (b) and (f) above. Accordingly, prior to the end of the first and third quarters of each calendar year through the period of performance of the contract, beginning with the fourth quarter of 2010, the Contractor shall deliver to the Government an executed bilateral contract modification, in the format set forth in Exhibit "A" to this requirement, covering the six month period of time ending with the second and fourth quarters, respectively, of the preceding year, with such specific exceptions, if any, as are identified by the Contractor. If the Contractor cites specific exceptions to the release, the Contractor shall concurrently provide the Contracting Officer with notice, containing the information set forth in paragraph (b) of this requirement, for each item excepted from the release. However, the release required by this requirement shall not make unallowable any costs which are otherwise allowable under any other requirement of this contract.

Within sixty (60) days of receipt of the release, the Contracting Officer shall sign and return a copy of the release to the Contractor. If the Contracting Officer fails to execute and return the release within the

required time, then the release shall be deemed to be void and of no effect for the period involved.

(i) If the release in accordance with paragraph (h) above is not provided to the Government by the Contractor in the time required, the Contracting Officer may execute the release as set forth in Exhibit "A" and send it to the Contractor. If the Contractor fails to execute the release and return it to the Government (with any specific exceptions) within sixty (60) days of receipt thereof, the required release shall then be deemed effective as if signed by the Contractor.

Exhibit "A" to the Requirement entitled "NOTIFICATION OF CHANGES"

This modification reflects the agreement of the parties to the mutual full and final releases for the consequences of that conduct (as conduct is defined in the requirement entitled "NOTIFICATION OF CHANGES"), described below, except the conduct identified in Attachment A hereto is excluded and not covered by the terms of this release.

1. Except for the conduct listed in Attachment A by either party, neither the Contractor nor the Government shall be entitled to any equitable adjustment or to money damages and/or other relief for any conduct, as specified below.

2. In consideration of the foregoing the parties hereby agree to the following release:

(a) The Government, for itself, its assigns, vendors, suppliers, and contractors, hereby remises, releases, and forever discharges the Contractor, its officers, agents and employees from any and all entitlement of the Government to equitable adjustment of the contract cost and fee and delivery schedule due to conduct under this contract, which occurred on or before TBD.

(b) The Contractor, for itself, its successors, assigns, vendors, suppliers, and subcontractors, hereby remises, releases and forever discharges the Government, its officers, agents and employees from (i) any and all entitlement of the Contractor to equitable adjustment of the contract cost and fee and/or delivery schedule of this contract or of any other Government contract (with this or any other Contractor) or any contract between the Contractor and any third party by reason of any conduct which increases the Contractor's cost or time of performance of work under this contract and meets the following conditions (1) known to the Contractor, (2) occurred on or before TBD and (3) the Contractor failed to give notice prior to date of this release, and (ii) any and all liabilities to the Contractor for money damages and/or other relief for the impact of any such conduct, upon this contract or any other Government contract (with this or any other Contractor) or any contract between the Contractor and any third party.

26. 52.243-7 NOTIFICATION OF CHANGES (APR 1984)

(a) Definitions.

"Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which

shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing, within 5 calendar days from the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—
 - (i) What contract line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
 - (iv) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following the submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the

manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within 30 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or combinations thereof.

27. 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 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.

(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\(k\)](#).

28. HQ C-2-0037 ORGANIZATIONAL CONFLICT OF INTEREST (NAVSEA) (JUL 2000)

(a) "Organizational Conflict of Interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. "Person" as used herein includes Corporations, Partnerships, Joint Ventures, and other business enterprises.

(b) The Contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in the contract, the Contractor does not have any organizational conflict of interest(s) as defined in paragraph (a).

(c) It is recognized that the effort to be performed by the Contractor under this contract may create a potential organizational conflict of interest on the instant contract or on a future acquisition. In order to avoid this potential conflict of interest, and at the same time to avoid prejudicing the best interest of the Government, the right of the Contractor to participate in future procurement of equipment and/or

services that are the subject of any work under this contract shall be limited as described below in accordance with the requirements of FAR 9.5.

(d)(1) The Contractor agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information provided to the Contractor by the Government during or as a result of performance of this contract. Such information includes, but is not limited to, information submitted to the Government on a confidential basis by other persons. Further, the prohibition against release of Government provided information extends to cover such information whether or not in its original form, e.g., where the information has been included in Contractor generated work or where it is discernible from materials incorporating or based upon such information. This prohibition shall not expire after a given period of time. (2) The Contractor agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information generated or derived during or as a result of performance of this contract. This prohibition shall expire after a period of three years after completion of performance of this contract. (3) The prohibitions contained in subparagraphs (d)(1) and (d)(2) shall apply with equal force to any affiliate of the Contractor, any subcontractor, consultant, or employee of the Contractor, any joint venture involving the Contractor, any entity into or with which it may merge or affiliate, or any successor or assign of the Contractor. The terms of paragraph (f) of this Special Contract Requirement relating to notification shall apply to any release of information in contravention of this paragraph (d).

(e) The Contractor further agrees that, during the performance of this contract and for a period of three years after completion of performance of this contract, the Contractor, any affiliate of the Contractor, any subcontractor, consultant, or employee of the Contractor, any joint venture involving the Contractor, any entity into or with which it may subsequently merge or affiliate, or any other successor or assign of the Contractor, shall not furnish to the United States Government, either as a prime contractor or as a subcontractor, or as a consultant to a prime contractor or subcontractor, any system, component or services which is the subject of the work to be performed under this contract. This exclusion does not apply to any re-competition for those systems, components or services furnished pursuant to this contract. As provided in FAR 9.505-2, if the Government procures the system, component, or services on the basis of work statements growing out of the effort performed under this contract, from a source other than the contractor, subcontractor, affiliate or assign of either, during the course of performance of this contractor or before the three year period following completion of this contract has lapsed, the Contractor may, with the authorization of the cognizant Contracting Officer, participate in a subsequent procurement for the same system, component or service. In other words, the Contractor may be authorized to compete for procurement(s) for systems, components or services subsequent to an intervening procurement.

(f) The Contractor agrees that, if after award, it discovers an actual or potential organizational conflict of interest, it shall make immediate and full disclosure in writing to the Contracting Officer. The notification shall include a description of the actual or potential organizational conflict of interest, a description of the action which the Contractor has taken or proposes to take to avoid, mitigate, or neutralize the conflict, and any other relevant information that would assist the Contracting Officer in making a determination on this matter. Notwithstanding this notification, the Government may terminate the contract for the convenience of the Government if determined to be in the best interest of the Government.

(g) Notwithstanding paragraph (f) above, if the Contractor was aware, or should have been aware, of an organizational conflict of interest prior to the award of this contract, or becomes, or should

become, aware of an organizational conflict of interest after award of this contract and does not make an immediate and full disclosure in writing to the Contracting Officer, the Government may terminate this contract for default.

(h) If the Contractor takes any action prohibited by this requirement or fails to take action required by this requirement, the Government may terminate this contract for default.

(i) The Contracting Officer's decision as to the existence or nonexistence of an actual or potential organizational conflict of interest shall be final.

(j) Nothing in this requirement is intended to prohibit or preclude the Contractor from marketing or selling to the United States Government its product lines in existence on the effective date of this contract; nor, shall this requirement preclude the Contractor from participating in any research and development or delivering any design development model or prototype of any such equipment. Additionally, sale of catalog or standard commercial items are exempt from this requirement.

(k) The Contractor shall promptly notify the Contracting Officer, in writing, if it has been tasked to evaluate or advise the Government concerning its own products or activities or those of a competitor in order to ensure property safeguards exist to guarantee objectivity and to protect the Government's interest.

(l) The Contractor shall include this requirement in subcontracts of any tier which involve access to information or situations/conditions covered by the preceding paragraphs, substituting "subcontractor" for "contractor" where appropriate.

(m) The rights and remedies described herein shall not be exclusive and are in addition to other rights and remedies provided by law or elsewhere included in this contract.

(n) Compliance with this requirement is a material requirement of this contract.

29. 5252.243-9113 OTHER CHANGE PROPOSALS (CT) (JAN 1990)

(a) The Contracting Officer, in addition to proposing engineering changes pursuant to other requirements of this contract, and in addition to issuing changes pursuant to the clause of this contract entitled "CHANGES", may propose other changes within the general scope of this contract as set forth below. Within forty-five (45) days from the date of receipt of any such proposed change, or within such further time as the Contracting Officer may allow, the Contractor shall submit the proposed scope of work, plans and sketches, and its estimate of: (A) the cost, (B) the weight and moment effect, (C) effect on delivery dates of the vessel(s), and (D) status of work on the vessels affected by the proposed change. The proposed scope of work and estimate of cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require. Within sixty (60) days from the date of receipt of the Contractor's estimate, the Contractor agrees to either (A) enter into a supplemental agreement covering the estimate as submitted, or (B) if the estimate as submitted is not satisfactory to the Contracting Officer, enter into negotiations in good faith leading to the execution of a bilateral supplemental agreement. In either case, the supplemental agreement shall cover an equitable adjustment in the contract cost and fee including an equitable adjustment for preparatory work set forth above, scope, and all other necessary equitable adjustments. The Contractor's estimate referred to in this subparagraph

shall be a firm offer for sixty (60) days from and after the receipt thereof by the Contracting Officer having cognizance thereof, less such period of time is extended by mutual consent.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the "CHANGES" clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) In the event that a change proposed by the Contracting Officer is not incorporated into the contract, the work done by the Contractor in preparing the estimate in accordance with subparagraph (a) above shall be treated as if ordered by the Contracting Officer under the "CHANGES" clause. The Contractor shall be entitled to an equitable adjustment in the contract cost and fee for the effort required under subparagraph (a), but the Contractor shall not be entitled to any adjustment in delivery date. Failure to agree to such equitable adjustment in the contract cost and fee shall be a dispute within the meaning of the clause of this contract entitled "DISPUTES" (FAR 52.233-1).

30. 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed zero or the overtime premium is paid for the work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

*Insert either “zero” or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

31. SS C-2-0023 POST-AWARD SUBMISSION

After receipt of award and prior to starting work aboard the vessel, the Contractor must submit a list of employees who will work aboard ship to the Commanding Officer of the ship VIA the Project Manager. The list should be on company letterhead, include each employee’s name, social security number, and security clearance when required, and bear the signature of a company official.

32. 252.211-7007 REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY (NOV 2008)

(a) Definitions. As used in this clause—

2D data matrix symbol means the 2-dimensional Data Matrix ECC 200 as specified by International Standards Organization/International Electrotechnical Commission (ISO/IEC) Standard 16022: Information Technology—International Symbology Specification—Data Matrix.

Acquisition cost, for Government-furnished equipment, means the amount identified in the contract, or in the absence of such identification, the item’s fair market value.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; e.g., the enterprise identifier along with the contractor’s property internal identification, i.e., tag number is recognized as the serial number; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished equipment means an item of special tooling, special test equipment, or equipment, in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor (including subcontractors and alternate locations) for the performance of a contract.

Item means equipment, special tooling, or special test equipment, to include such equipment, special tooling, or special test equipment that is designated as serially managed, mission essential, sensitive, or

controlled inventory (if previously identified as such in accordance with the terms and conditions of the contract).

Item unique identification (IUID) means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

IUID Registry means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not equipment, special tooling, or special test equipment.

Reparable means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

Sensitive item means an item potentially dangerous to public safety or security if stolen, lost or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Serially managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, or equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items, including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

Virtual UII means the UII data elements assigned to an item that is not marked with a DoD compliant 2D

data matrix symbol, e.g., enterprise identifier, part number, and serial number; or the enterprise identifier along with the Contractor's property internal identification, i.e., tag number.

(b) Requirement for item unique identification of Government-furnished equipment. Except as provide in paragraph (c) of this clause—

(1) Contractor accountability and management of Government-furnished equipment shall be performed at the item level; and

(2) Unless provided by the Government, the Contractor shall establish a virtual UII or a DoD recognized unique identification for items that are—

(i) Valued at \$5,000 or more in unit acquisition cost; or

(ii) Valued at less than \$5,000 in unit acquisition cost and are serially managed, mission essential, sensitive, or controlled inventory, as identified in accordance with the terms and conditions of the contract.

(c) Exceptions. Paragraph (b) of this clause does not apply to—

(i) Government-furnished material;

(ii) Reparables;

(iii) Contractor-acquired property;

(iv) Property under any statutory leasing authority;

(v) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(vi) Intellectual property or software; or

(vii) Real property.

(d) Procedures for establishing UIIs. To permit reporting of virtual UIIs to the DoD IUID Registry, the Contractor's property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii) of the Government Property clause of this contract (FAR 52.245-1):

(1) Parent UII.

(2) Concatenated UII.

(3) Received/Sent (shipped) date.

(4) Status code.

- (5) Current part number (if different from the original part number).
- (6) Current part number effective date.
- (7) Category code (“E” for equipment).
- (8) Contract number.
- (9) Commercial and Government Entity (CAGE) code.
- (10) Mark record.
 - (i) Bagged or tagged code (for items too small to individually tag or mark)
 - (ii) Contents (the type of information recorded on the item, e.g., item internal control number).
 - (iii) Effective date (date the mark is applied).
 - (iv) Added or removed code/flag.
 - (v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).
 - (vi) Marker identifier, e.g., Contractor’s CAGE code or DUNS number.
 - (vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.
 - (viii) Value, e.g., actual text or data string that is recorded in its human readable form.
 - (ix) Set (used to group marks when multiple sets exist); for the purpose of this clause, this defaults to “one (1).”

(e) Procedures for updating the DoD IUID Registry. The Contractor shall update the DoD IUID Registry at <https://www.bpn.gov/iuid> for changes in status, mark, custody, or disposition of items—

- (1) Delivered or shipped from the Contractor’s plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;
- (2) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;
- (3) Disposed of; or

- (4) Transferred to a follow-on or other contract.

33. 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

- (a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR [15.403-4](#) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If—

- The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

- The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment

manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(4) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in [Table 15-2](#) of FAR [15.408](#).

As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR [15.406-2](#).

34. SMALL BUSINESS SUBCONTRACTING BY LARGE BUSINESS SELLERS

(a) The Prime Contract requires that Buyer subcontract to small businesses, either directly or indirectly, a percentage of direct costs related to Prime Contract production work. This requirement may be met at any subcontracting tier.

(b) To facilitate Buyer's meeting the requirement of subparagraph (a), above, large business Sellers shall identify to Buyer the number of dollars that Seller pays to small businesses for services or supplies, and in each case, Seller shall identify any special category of the small business, *i.e.*, veteran-owned, service-disabled veteran-owned, disadvantaged, women-owned, or HUB Zone small business.

(c) Buyer cannot "tier" profit or fee on any major subcontract (purchase order). "Tiering" is the adding of profit or fee to Seller's profit or fee. A "major subcontract" is a subcontract (purchase order) held by a large business Seller. There is one exception to this tiering prohibition, and that is when a large business Seller is awarded a fixed-price subcontract (purchase order) via competition. Therefore, large business Sellers shall identify the amount of profit or fee that is included in their proposals to Buyer if the subcontract (purchase order) was not competitively bid.

35. SMALL BUSINESS SUBCONTRACTING REQUIREMENT

For the purpose of this provision, the small business subcontracting requirement is that the prime contractor subcontract to small businesses, either directly or indirectly, over the course of all scheduled availabilities and inter-availability work completed within a Fee Evaluation Period (defined in Section B of this solicitation, "Determination of Fee Clause") to the extent that small business subcontracting averages forty percent (40%) of direct costs related to production work for CLINS associated with scheduled availabilities and inter-availability work (i.e., Continuous Maintenance and Emergent Maintenance) completed within the evaluation period, minus the cost of any directed subcontracts and execution planning efforts, not including direct costs. The forty percent (40%) subcontracting requirement may be met at any subcontracting tier. However, the Government will NOT permit the "tiering" of profit or fee on any large or small business subcontract. The Government will NOT permit any "profit-on-profit" or "fee-on-fee" on any subcontract held by a large or small business. Prime contractors shall NOT include fee from any large or small business subcontractor, including but not limited to Government directed large or small business subcontractors, Original Equipment Manufacturers (OEMs), and Tech Reps in their fee bearing costs. The only exception to this requirement is a large or small business subcontractor awarded a fixed price contract in a competitive environment where cost and pricing data was not available.

The Offeror must accomplish the 40% small business subcontracting requirement using at least two or more small businesses for EACH CNO scheduled availability.

A small business Offeror is not exempt from this requirement because of its status as a small business.

Offerors are encouraged to subcontract with small, disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, historically black colleges and universities and minority institutions, and HUB-Zone small businesses. The Offerors should also strive to meet the 40% small business subcontracting requirement using the aforementioned categories of small businesses to the greatest extent possible.

The extent to which the contractor does or does not meet, the requirements of this provision during actual contract performance, as documented by compliance reports submitted by the Contractor in accordance with Contract Data Requirements List (CDRL) (A001) will be evaluated for fee purposes.

The failure of the Contractor to comply in good faith with this clause shall be considered a material breach of the contract.

The Government reserves the right, on a case basis, to deviate from the requirements of this clause based on circumstances at time of contract performance.

NOTE: Purchase orders to a subcontractor for work, which has not been performed, or for equipment ordered but not received within a fee evaluation period, will not be considered for the purpose of meeting the requirements of this clause. "Open commitments" (e.g., material/equipment ordered but not received, services ordered but not performed) will not be considered during a fee period just because a purchase order was issued. Material/equipment or services will only be considered once the equipment/material is actually received or the work is actually performed during a Fee Evaluation Period.

36. 52.244-2 SUBCONTRACTS (JUN 2007)

(a) Definitions. As used in this clause—

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

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

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

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

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

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

(2) Is fixed-price and exceeds—

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

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

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

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

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

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

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

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

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

(vii) A negotiation memorandum reflecting—

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

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

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

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

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

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

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

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

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

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

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

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

(f) No subcontract or modification thereof placed under this contract shall provide for

payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

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

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

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

37. 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)

(a) Definitions.

“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) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

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

- (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Veterans (SEP 2006) (38 U.S.C. 4212(a));
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- (vii) Reserved.
- (viii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
- (ix) 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), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(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.

38. 22. 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(a) Definitions. As used in this clause—

(1) “Components” mean articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) “Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) “Foreign flag vessel” means any vessel that is not a U.S.-flag vessel.

(4) “Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) “Subcontractor” means a supplier, material man, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) “Supplies” means all property, except land and interests in land that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for

example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type and description, with parts, subassemblies, accessories, and equipment; machine tools; materials; and components of the foregoing.

(7) “U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(3) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(4) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(5) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such dates) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM	CONTRACT	QUANTITY
DESCRIPTION	LINE ITEMS	

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

39. SS C-2-0016 USE OF BLACK OXIDE COATED THREADED FASTENERS (BOCTFs)

Due to safety concerns, use of BOCTFs is not authorized when installing or replacing threaded fasteners in the accomplishment of any work required by any Work Item in this contract.

40. SS L-2-0008 WORK AT A GOVERNMENT INSTALLATION (SWRMC)

If the Schedule requires work to be performed aboard ship while located at a Government installation, Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions, including security requirements that may affect the cost of performing the work, in the event such information is reasonably obtainable. In no event will the failure to inspect the site constitute grounds for a claim after award of the job order/contract.

PART B: INCORPORATED FAR AND DFARS CLAUSES

The following clauses are flowed down pursuant to the requirements of the Prime Contract.

41. 252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

FAR <http://www.arnet.gov/far>

DFARS <http://www.acq.osd.mil/dp/dars/dfars/dfars.html>

1. Definitions

The following terms will have the meanings indicated in each of the following FAR and DFARS clauses, unless the context indicates otherwise. *While every effort was made to keep the capitalization consistent for the terms, the inconsistent capitalization should not affect the meaning intended for the terms, whether the terms are capitalized or appears in lower case form.*

- (a) “Contract” means this Contract
- (b) “Contractor” means Seller
- (c) “Contracting Officer” means Buyer
- (d) “Government” means Buyer
- (e) “Subcontractor” mean Seller’s subcontractors

2. DFARS Clauses

252.201-7000 Contracting Officer’s Representative (DEC 1991)

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2008)

252.204-7000 Disclosure of Information (DEC 1991)

252.204-7003 Control of Government Personnel Work Product (APR 1992)

252.204-7004 Central Contractor Registration (52.204-7), Alternate A (SEP 2007)

252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991)

252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material (DEC 1991)

252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist (DEC 1991)

252.209-7002 Disclosure of Ownership or Control by a Foreign Government (JUN 2005)

252.223-7001 Hazard Warning Labels (DEC 1991)

252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)

252.211-7000 Acquisition Streamlining (DEC 1991)

252.215-7000 Pricing Adjustments (DEC 1991)

252.215-7002 Cost Estimating Systems Requirements (DEC 2006)

252.215-7003 Excessive Pass-Through Charges – Identification of Subcontract Effort (MAY 2008)

252.215-7004 Excessive Pass-Through Charges (MAY 2008)

252.217-7028 Over and Above Work (DEC 1991)

252.219-7003 Small Business Subcontracting Plan (DOD Contracts) (APR 2007)

252.223-7004 Drug Free Work Force (SEP 1988)

252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993)

252.225-7001 Buy American Act and Balance of Payments Program (JAN 2009)

252.225-7002 Qualifying Country Sources as Subcontractors (APR 2003)

252.225-7004 Report of Intended Performance Outside the United States and Canada— Submission after Award (MAY 2007)

252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (SEP 2006)

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUL 2009)

252.225-7012 Preference for Certain Domestic Commodities (DEC 2008)

252.225-7013 Duty-Free Entry (OCT 2006)

252.225-7014 Preference for Domestic Specialty Metals (APR 2003); and Alternate I (JUN

2005)

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAR 2006)

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain (DEC 2009)

252.225-7025 Restriction on Acquisition of Forgings (JUL 2006)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (DEC 2006)

252.225-7031 Secondary Arab Boycott of Israel (JUN 2005)

252.225-7036 Buy American – North American Free Trade Agreement Implementation Act – Balance of Payments Program (JAN 2009)

252.225.7037 Evaluation of Offers for Air Circuit Breakers (JUN 2005)

252.227-7013 Rights in Technical Data—Noncommercial Items (NOV 1995)

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995)

252.227-7016 Rights in Bid or Proposal Information (JUN 1995)

252.227-7019 Validation of Asserted Restrictions—Computer Software (JUN 1995)

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988)

252.227-7030 Technical Data--Withholding of Payment (MAR 2000)

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999)

252.231-7000 Supplemental Cost Principles (DEC 1991)

252.242.7004 Material Management and Accounting System (JUL 2009)

252.243.7001 Pricing of Contract Modifications (DEC 1991)

252.243-7002 Requests for Equitable Adjustment (MAR 1998)

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (MAR 2000)

252.246-7000 Material Inspection and Receiving Report (MAR 2008)

252.246-7001 Warranty of Data (DEC 1991)

252.247-7023 Transportation of Supplies by Sea (MAY 2002)

252.247-7024 Notification Of Transportation of Supplies by Sea (MAR 2000)

252.249-7002 Notification of Anticipated Termination or Reduction (DEC 2006)

252.251-7000 Ordering from Government Supply Sources (NOV 2004)

3. FAR Clauses

- 52.202-1 Definitions (JUL 2004)
- 52.203-3 Gratuities (APR 1984)
- 52.203-5 Covenant against Contingent Fees (APR 1984)
- 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
- 52.203-7 Anti-Kickback Procedures (JUL 1995)
- 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2007)
- 52.203-13 Contractor Code of Business Ethics and Conduct (DEC 2008)
- 52.204-2 Security Requirements (AUG 1996)
- 52.204-4 Printed or Copied Double-Sided on Recycled Paper (AUG 2000)
- 52.204-7 Central Contractor Registration (APR 2008)
- 52.204-9 Personal Identity Verification of Contractor Personnel (SEP 2007)
- 52.204-10 Reporting Subcontract Awards (SEP 2007)
- 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (SEP 2006)
- 52.211-5 Material Requirements (AUG 2000)
- 52.211-15 Defense Priority and Allocation Requirements (APR 2008)
- 52.214-26 Audit-Sealed Bidding (Applicable to Fixed Price Orders Exceeding \$100,000) (MAR 2009)
- 52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications –Sealed Bidding (Applicable if Fixed Price Order) (OCT 1997)
- 52.214-28 Subcontractor Cost and Pricing Data-Modifications-Sealed Bidding (Applicable if Fixed Price Order) (OCT 1997)
- 52.215-2 Audit and Records—Negotiation (MAR 2009)
- 52.215-8 Order of Precedence—Uniform Contract Format (OCT 1997)
- 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)
- 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 1997)
- 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)
- 52.215-13 Subcontractor Cost and Pricing Data – Modifications (OCT 1997)
- 52.215-14 Integrity of Unit Prices [Applicable if Order issued under a negotiated prime

- contract] (OCT 1997)
- 52.215-15 Pension Adjustments and Asset Reversions (OCT 2004)
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)
- 52.215-19 Notification of Ownership Changes [Applicable when the Order is subject to requirements of FAR 15.408(k)]
- 52.216-7 Allowable Cost and Payment (DEC 2002)
- 52.219-4 Notice of Price Evaluation Preference of HUBZone Small Business Concerns (9JUL 2005)
- 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- 52.219-9 Alt II Small Business Subcontracting Plan (Apr 2008) Alternate II (OCT 2001)
- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (JUL 2005)
- 52.222-19 Child Labor—Cooperation with Authorities and Remedies (AUG 2009)
- 52.222-20 Walsh-Healey Public Contracts Act (DEC 1996)
- 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- 52.222-26 Equal Opportunity (MAR 2007)
- 52.222-35 Equal Opportunity for Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- 52.222-37 Employment Reports on Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- 52.222-38 Compliance with Veterans’ Employment Reporting Requirements (DEC 2001)
- 52.222-50 Combating Trafficking in Persons (FEB 2009)
- 52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997)
- 52.223-5 Pollution Prevention and Right-to-Know Information (AUG 2003)
- 52.223-6 Drug-Free Workplace (MAY 2001)
- 52.223-7 Notice of Radioactive Materials [Applicable in any Order concerning radioactive materials as set forth in Paragraph (a) of the clause] (JAN 1997)
- 52.223-11 Ozone-Depleting Substances (MAY 2001)
- 52.223-12 Refrigeration Equipment and Air Conditioners (MAY 1995)
- 52.223-14 Toxic Chemical Release Reporting (AUG 2003)
- 52.225-8 Duty-Free Entry [IAW paragraph (j)] (FEB 2000)
- 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)

52.227-1 Authorization and Consent (DEC 2007)

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

52.227-10 Filing Patent Applications—Classified Subject matter (DEC 2007)

52.227-11 Patent Rights—Retention by the Contractor (Short Form) (DEC 2007)

52.227-13 Patent Rights—Acquisition by the Government (DEC 2007)

52.228-5 Insurance-Work on a Government Installation (JAN 1997)

52.228-7 Insurance—Liability to Third Persons (MAR 1996)

52.230-2 Cost Accounting Standards (OCT 2008)

52.230-3 Disclosure and Consistency of Cost Accounting Practices (OCT 2008)

52.230-6 Administration of Cost Accounting Standards (OCT 2008)

52.232-9 Limitations on Withholding of Payments (APR 1984)

52.232-17 Interest (OCT 2008)

52.232-20 Limitation of Cost (APR 1984)

52.232-22 Limitation of Funds (APR 1984)

52.232-23 Assignment of Claims (JAN 1986) – Alternate I (APR 1984)

52-232-25 Prompt Payment (OCT 2008)

52.233-1 Disputes (JUL 2002) – Alternate I (DEC 1991)

52.233-3 Protest After Award (AUG 1996) – Alternate 1 (JUN 1985)

52.233-4 Applicable Law for Breach of Contract Claim (OCT 2004)

52.234-1 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994)

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

52.237-3 Continuity of Services (JAN 1991)

52.242-1 Notice of Intent to Disallow Costs (APR 1984)

52.242-3 Penalties for Unallowable Costs (MAY 2001)

52.242-4 Certification of Final Indirect Costs (JAN 1997)

52.242-13 Bankruptcy (JUL 1995)

52.242-15 Stop-Work Order (Aug. 1989) Alternate I (APR 1984)

52.243-2 Changes—Cost-Reimbursement (AUG 1987)

52.243-6 Change Order Accounting (APR 1984)

52.244-2 Subcontracts (JUN 2007)

52.244-5 Competition in Subcontracting (DEC 1996)

- 52.244-6 Subcontracts For Commercial Items and Commercial Components (MAR 2009)
- 52.245-1 Government Property (JUN 2007)
- 52.245-2 Government Property Installation Operation Services (JUN 2007)
- 52.245-9 Use and Charges (JUN 2007)
- 52.247-29 F.O.B. Origin (FEB 2006)
- 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- 52.247-65 F.O.B. Origin, Prepaid Freight—Small Package Shipments (JAN 1991)
- 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit [When Seller is directed to comply by Buyer in a separate writing] (FEB 2006)
- 52.248-1 Value Engineering (FEB 2000)
- 52.249-6 Termination (Cost-Reimbursement) (MAY 2004)
- 52.249-14 Excusable Delays (APR 1984)
- 52.251-1 Government Supply Sources (APR 1984)
- 52.253-1 Computer Generated Forms (JAN 1991)

PART C: FLOW-DOWN TERMS AND CONDITIONS FROM BAE'S GENERAL SUBCONTRACT TERMS

1. ANTI-KICKBACK COVENANT; PROHIBITION OF GIFTS AND GRATUITIES TO BUYER OR BAE; PROCUREMENT INTEGRITY COVENANT; CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS; AND DEBARMENT AND SUSPENSION COVENANT.

(a) Anti-Kickback Covenant. Seller is hereby on notice that the Contract Work is in support of a Government prime contract, this Contract is subject to the terms of the Anti-Kickback Act of 1986 (41 U.S.C. §51-58) and implementing regulations and prime contract clauses. Seller agrees that Seller shall be strictly prohibited from providing or attempting to provide or offering to provide any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to Buyer or BAE, to any Buyer or BAE employee, or to any other subcontractor of Buyer or BAE or any employee of subcontractor for the purpose of improperly obtaining this or any other contract or order from Buyer or BAE or for rewarding favorable treatment in connection with this or any other contract or Order between Buyer and Seller. Seller also agrees that it shall promptly report to Buyer's or BAE's General Counsel any solicitation or request for a kickback as defined in the previous sentence. Seller's breach of the foregoing prohibition or of the foregoing obligation to report shall be considered a material breach of this Contract and of any and all contracts between Buyer and Seller.

(b) Gifts and Gratuities. Seller is hereby on notice that this Contract is subject to the terms of the Office of Federal Procurement Policy Act (41 U.S.C. §423) and implementing regulations. Seller agrees that Seller shall, during the conduct of any federal agency procurement, be strictly prohibited from engaging in any of the following activities: (i) making, directly or indirectly, any offer or promise of future employment or business opportunity to, or engaging, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency; (ii) offering, giving, or promising to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; (iii) soliciting or obtaining, directly or indirectly, from any officer or employee of such agency, any proprietary or source selection information regarding such procurement; (iv) knowingly disclosing any proprietary or source-selection information regarding such procurement, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information; or (v) permitting any individual who was formerly a Government procurement official with respect to the Government contract under which the Contract Work will be supplied, to knowingly participate in any manner in any negotiations leading to an award, modification, or extension of a contract for such procurement, or to knowingly participate personally and substantially on behalf of Seller in the performance of such contract [this last restriction (v) only applies if this Contract qualifies under 41 U.S.C. §423(d)]. Seller also agrees that it shall promptly report to Buyer's or BAE's General Counsel any violations or possible violations of the above provisions.

(c) Violation. Seller's violation of any of the prohibitions set forth in 41 U.S.C. §423 or failure to comply with the reporting requirements shall be considered a material breach of this Contract

and of any and all contracts between Buyer and Seller. Seller agrees to indemnify and save harmless Buyer and BAE and their successors, assigns, or customers from any expense, loss, damage, or liability on account of any violations of the foregoing prohibitions. Seller agrees at its own expense to defend any actions, suits or claims in which such violations are alleged, provided that Seller is notified as to such actions, suits or claims.

(d) Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions. If the Contract Work exceeds \$25,000, this Contract is subject to FAR Subpart 9.4. Seller for itself and its Principals warrants and covenants that neither Seller nor any of its principals as of the time of entering into this Contract, is debarred, suspended or proposed for debarment by the Government (except such as has been disclosed in writing to Buyer's or BAE's General Counsel). "Principals" as used in this clause means officers, directors, owners, partners and persons having primary management or supervisory responsibilities. Breach of the foregoing warranty and covenant shall entitle Buyer and BAE, in addition to any other rights and remedies, immediately to terminate for default any and all orders to Seller outstanding at the time that Buyer or BAE learns of any such breach, regardless when such breach may have occurred.

(e) Debarment and Suspension Covenant Seller is hereby on notice that if a Government contract number appears on the face of this Order and if this Order exceeds \$25,000, this Order is subject to the terms of FAR Subpart 9.4. Seller for itself and its principals warrants and covenants that neither Seller nor any of its principals as of the time of entering into this Order is debarred, suspended, or proposed for debarment by the federal Government (except such as has been disclosed in writing to Buyer's or BAE's General Counsel). "Principals" as used in this clause means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities. Breach of the foregoing warranty and covenant shall entitle Buyer and BAE, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer or BAE learns of any such breach, regardless when such breach may have occurred.

2. COST OR PRICING DATA INDEMNITY.

If Seller submitted cost or pricing data (as defined in FAR Subpart 15.4 Contract Pricing) as part of the process leading up to the award of this Contract or if the Seller submits such data in connection with the pricing of any change order or other modification of this Contract, Seller acknowledges that it is aware of Buyer's or BAE's potential liability to the Government in the event that any of Seller's data were not current, complete, or accurate. Seller warrants that all cost or pricing data submitted by it (including data obtained from Seller's subcontractors, if any) in connection with Contract shall be complete, accurate, and current as of the time of agreement between Buyer and Seller to the price of this Contract. Seller shall indemnify and save harmless Buyer and BAE from any and all loss or expenses caused by any breach of the foregoing warranty, including but not limited to any and all costs and fees incurred by Buyer or BAE for defending against claims alleging deficiencies in Seller's cost or pricing data, regardless whether such claims may ultimately be held lacking in merit.

3. BUSINESS AND ETHICS CONDUCT

(a) It is the policy of BAE that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even the perception that favorable treatment was sought or received, or that questionable

activities were engaged in or condoned. Purchases of supplies, materials and services from Sellers must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on corporations and the individuals involved for violation of laws, federal and state, that affect the conduct of business under this Agreement.

(b) The Government has amended the Federal Acquisition Regulations (FAR) to include Clause 52.203-13 Contractor Code of Business Ethics and Conduct. This clause requires: (i) a Code of Business Conduct and Ethics; and, (ii) compliance with mandatory disclosure reporting. Although the FAR flow-down of this clause to Sellers is subject to dollar and performance period thresholds, Buyer and BAE highly recommend that Seller comply with FAR 52.203-15 regardless of the purchase order value or length of the period of performance. Establishing a Business Ethics and Conduct program is in the best interest of the Seller, Buyer, BAE Systems, and the Government. BAE Systems Ethics Program can provide guidance for establishing an Ethics program upon request. Point of Contact is BAE Systems Ethics Officer at 757-494-2993.

4. ACCESS TO BAE'S SHIPYARD BY NON-U.S. CITIZENS

Seller is hereby placed on notice that, at any given time, BAE may have a United States Navy vessel in its shipyard and, in accordance with BAE's prime contracts, only U.S. citizens are eligible for access to U.S. Navy vessels, work sites and adjacent areas, and shops where work in the naval vessel's equipment is being performed, unless prior approval is obtained for non-U.S. citizens, Seller warrants that, unless prior approval is obtained for non-U.S. citizens, Seller warrants that, unless prior approval is obtained for non-U.S. citizens shall have access to BAE's shipyard.

5. BAE'S EXPORT CONTROL CLAUSE

(a) Seller agrees to comply with all U.S. export control laws and regulations. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of a United States Government export license, export agreement, or applicable license exemption or exception.

(b) Seller agrees to notify Buyer if any Articles or service to be delivered under this Purchase Order is restricted by export control laws or regulations.

(c) Seller shall immediately notify Buyer's Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) For the purpose of this Article, "Foreign Persons" shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3) (i.e. persons granted asylum by the Government of the United States). It also means any Foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). Further, United States Citizens, lawful permanent residents, or protected individuals who are employed by such foreign organizations shall be deemed "Foreign Persons" for the purpose of this Article.

(e) All consultants, independent contractors and suppliers, who deliver material or provide services to BAE's site, will confirm in writing that they or their agents or employees meet one of the following criteria:

- (1) A citizen of the United States, or
- (2) A lawful permanent residents as defined by U.S.C. 1101(b)(20), (i.e., Green Card Holders"), or
- (3) A Protected Individuals as defined by 8 USC 1324b(a)(3) (i.e., persons granted asylum by the Government of the United States), or
- (4) A foreign national for whom a current and directly relevant license or approval has been obtained from the U.S. Department of State.

6. INCORPORATED PROVISIONS

The following attachments are incorporated into these terms and conditions by this reference as if given in full text. Incorporated attachments shall be made available by Buyer to Seller.

- A. Point of Contact Form.
- B. Indemnity Agreement
- C. Contractor Safety Training Verification Sheet.
- D. Certification of Business size and type.
- E. Seller Qualification Audit/Review.
- F. BAE Systems San Diego Ship Repair Environmental Best Management Practices.
- G. General Requirements for BAE Systems San Diego Ship Repair contracted Navy Ship Repair Subcontractors
- H. Security and Visit Request requirements
- I. Seller OSHA Affidavit
- J. Contractor Safe Practices Survey
- K. Subcontractor Environmental Survey
- L. Export Control Compliance Certification
- M. Acknowledgement of Requirements