

# APPLICABLE JOB CODE GOV SPARES

Prime Contract No. SEE Purchase Order

THIS IS A DEFENSE PRIORITY RATED CONTRACT IAW DPAS 15 CFR 350  
SEE PURCHASE ORDER FOR SPECIFIC RATING THAT APPLIES

## 1. Definitions and Meanings

a. As used throughout these terms and conditions, the following **definitions** shall apply:

1. **Government** means the United States of America.
2. **Navy** means the United States Department of the Navy and/or its duly authorized representatives.
3. **Cognizant Government Agency** means the Navy.
4. **Buyer** means the Prime Contractor responsible for the Purchase Order in which these Terms and Conditions are an applicable document.
5. **Seller** means the legal entity which has agreed to provide the goods or services required by this order.
6. **Purchase Order** means the contract document in which, and by acknowledgment thereof, Seller agrees to provide, for consideration stated therein, the goods and services in accordance with the requirements contained or referenced therein.
7. **Change Order** means a unilateral direction by the Buyer to the Seller to proceed with the work as changed and to report the effect on the order pursuant to the provisions of Article 6, Changes, Extras, and Substitutions.
8. **Amendment** means the contract document in which, and by acknowledgment thereof, the Seller agrees to modify the order in accordance with the provisions of the amendment.
9. **Lower\_Tier Subcontractor** means a supplier or subcontractor, including any supporting lower\_tier supplier or subcontractor, who has a subcontract or order from the Seller or any lower\_tier subcontractor.
10. **FAR** means the Federal Acquisition Regulation (located at Title 48 to the Code of Federal Regulations).

11. **DFARS** means the Defense Federal Acquisition Regulation Supplement (located at Title 48 to the Code of Federal Regulations).

b. Where a FAR or DFARS clause is incorporated by reference within these Terms and Conditions, then, except where the incorporation specifically provides for a different meaning, the following words shall have the following *meanings*:

1. **Contractor** shall mean **Seller**.

2. **Contract** shall mean **Purchase Order**.

3. **Government, Agency Head or Designee, Head of Contracting Activity or Designee, Contracting Officer and Administrative Contracting Officer** shall mean **Buyer**.

4. **Subcontract** shall mean **Sub-tier Order**

5. **Subcontractor** shall mean **Sub-tier Seller**.

## 2. **Contract Rights, Obligations and Disclaimers**

a. **Scope of Agreement.** This purchase order (which term shall be deemed to include related plans, drawings, specifications, and other documents) contains the entire agreement of the parties, and no modification, alteration, waiver, or other provision which is inconsistent with or in addition to the provisions of this order shall have any force or effect unless the same shall be incorporated in the order in writing by the Buyer.

b. **Disclaimer of Implied Warranties: Extracontractual Information and Documents; No Warranty of Accuracy and Completeness.** Any and all documentation and information that Buyer may at any time (pre-award or post-award) provide to Seller that has not been incorporated within and made a part of this purchase order shall be (i) non-contractual, (ii) provided solely for information and (iii) provided and without warranty, expressed or implied, including, without limitation, the implied warranties of accuracy and completeness. Seller agrees that Buyer cannot waive this disclaimer except in a formal modification to this purchase order.

c. **Waiver and Severability.** The failure or delay of either party to insist on performance of any provision of this order, or to exercise any right or remedy available under this order, shall not be construed as a waiver of

that provision, right or remedy in any later instance. Further, if any provision of this order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

d. **Contract Disputes Act Inapplicable.** Notwithstanding any provision within these terms and conditions (whether incorporated by reference or provided in text) to the contrary, the Contract Disputes Act (41 USC 601-613, as may be subsequently amended) shall in no manner apply to this purchase order.

### 3. **Delivery**

All delivery requirements set forth in this order are firm. Seller agrees that delays during performance of the order which would cause delivery to extend beyond contractual delivery date(s), and which are the responsibility of Seller, must be made up by Seller at its expense through the use of whatever means are necessary including, but not limited to, overtime and additional workshifts.

If Seller notifies Buyer that Seller anticipates or is encountering difficulty in complying with the delivery schedule specified in this order or not meeting any other requirement of this order, such notification shall be for information only and its receipt by Buyer shall not be construed as a waiver by Buyer (i) of any delivery schedule or date, or (ii) of compliance with any other order requirements by the Seller, or (iii) of any other rights or remedies provided to Buyer by law under this order.

Unless otherwise provided in this order, delivery shall not be made more than forty-five days prior to the delivery dates specified herein. Buyer may return early deliveries at Seller's risk and expense. Repair parts may ship by the purchase order delivery date or sooner; the forty-five day restriction does not apply to repair part procurements.

Should the Buyer determine that an extension in the purchase order delivery dates set forth herein is advisable, the extension will be accomplished under a bilateral amendment at no increase in purchase order cost.

### 4. **Taxes**

Unless otherwise expressly stated on the face of this order, the price stated herein includes all applicable Federal, state and local taxes in effect

on the date of this order but does not include any state or local sales, use or any other tax directly applicable to the completed supplies or services covered by this order from which Seller or this transaction is exempt.

## **5. Payments**

a. Except as otherwise provided in this order (e.g., progress payments), no payment by Buyer shall be due until thirty days after (1) receipt of an acceptable invoice and appropriate evidence that Seller has met all requirements of the order, or (2) receipt of the supplies and/or services at destination, whichever last occurs. Buyer may at its discretion make payments for partial delivery of supplies or services if so requested by Seller. No payment made by Buyer shall be deemed to indicate final acceptance and any payment made prior to final acceptance shall be returned by Seller at the request of Buyer if the supplies or services to which the payment relates are rejected.

b. Unless otherwise provided, if this order provides a discount for prompt payment, the discount period shall be calculated from the date an acceptable invoice and supporting evidence that all order requirements have been met is received or the date of receipt at destination of the supplies and/or services, whichever last occurs.

c. Seller and each assignee under an assignment in effect at the time of final payment agree as a condition precedent to final payment, that the Buyer and the Government, their respective officers, agents and employees are released from all liabilities, obligations and claims arising under or by virtue of this order. Seller further agrees that the final invoice shall constitute not less than ten percent (10%) of the total order price. Payment up to 100% of purchase order value is permitted at time of shipment with regard to purchase orders procuring only repair parts providing all certifications, drawings, and other required deliverable items have been received by the Buyer.

## **6. Changes, Extras And Substitutions**

a. Buyer may at any time, by a written Change Order issued by Buyer and without notice to the sureties, make changes, within the general scope of this order, to (i) the quantities or items of any repair part lists; and (ii) any one or more of the following:

1. If the purchase is in whole or in part for **supplies**: (i) drawings, designs and/or specifications when the supplies to be furnished are to be specifically manufactured for Buyer in accordance with the drawings, designs and/or specifications; (ii) method of shipment or packing and (iii) place of delivery, inspection and/or acceptance.

2. If the purchase order is in whole or in part for **research and development**: (i) drawings, designs or specifications; (ii) method of shipment or packing and (iii) place of delivery, inspection and/or acceptance.

3. If the purchase is in whole or in part for any other **services**: (i) description of services to be performed; (ii) time of performance (i.e., hours of the day, days of the week, etc.) and (iii) place of performance of the services.

b. If any such Change Order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this order, or otherwise affects any other provision of this order, whether changed or not changed by any such written notice of change, an equitable adjustment shall be negotiated in the order price or delivery requirements or both, and in such other provisions of the order as may be affected. Such adjustment shall be accomplished by a written amendment to this order signed by Buyer. No changes to this order are authorized unless made by a Buyer representative designated by name herein and substantiated by a formal written amendment/change order. Changes made by Seller, unless authorized by a formal written amendment/change order, shall be made at the sole risk of Seller, there being no financial recourse against Buyer.

c. Any request by Seller for equitable adjustment under this article must be asserted within 30 days or such earlier date as may be specified by Buyer from the date of receipt by Seller of the notification of Change Orders; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such Request for Equitable Adjustment (RFEA) asserted at any time prior to final payment under this order.

d. Where the cost of property made obsolete or excess as a result of change is included in Seller's RFEA, Buyer reserves the right to prescribe the manner of disposition of such property.

e. Nothing in this article shall excuse Seller from proceeding with the

order as changed.

f. Buyer will not pay for additional work or extras unless such work or extras have been ordered in writing and the price therefore agreed upon. Changes made by Seller without an authorized Change Order or Amendment shall be made at the sole risk of Seller, there being no financial recourse against Buyer.

g. Seller shall not substitute other material or accessories for those specified in the order without the written consent of Buyer.

h. Any purchase order claim, RFEA, request for equitable adjustment to purchase order terms, request for relief under Public Law 85\_804, or other similar request exceeding \$100,000 shall bear, at the time of submission, the following certificate given by an individual who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request:

*I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the purchase order adjustment for which the Seller believes the Buyer is liable; and that I am duly authorized to certify the claim on behalf of the Seller.*

*Officials Name*

*Title*

i. The certification in Paragraph h. requires full disclosure of all relevant facts, including cost or pricing data.

j. The certification requirement in Paragraph h. does not apply to: (i) Requests for routine order payments, for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement type purchase orders, and progress payment invoices; and (ii) Final adjustments under incentive provisions of purchase orders.

## **7. Liens**

Seller agrees to deliver to Buyer the articles covered by this order free and

clear of all liens, claims, and encumbrances.

## **8. Inspection**

a. All work (which term throughout this article includes without limitation raw materials, procedures and processes, components, intermediate assemblies and end products) that is performed in accordance with order requirements of this purchase order shall be subject to inspection and test by Buyer and the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. Seller is responsible for, and shall upon Buyer's request furnish evidence of, compliance with all requirements of the order; and inspection and test by Buyer or the Government of any work, or approval of designs, drawings, samples, test results, procedures, processes or schedules by Buyer or the Government does not relieve Seller from any responsibility to meet the order requirements.

b. In case any work is defective in material or workmanship or otherwise not in conformity with the requirements of this order, Buyer shall have the right either to reject it (with or without instructions as to its disposition) or to require correction. Work which has been rejected or required to be corrected shall be removed, or, if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails promptly to remove such work which is required to be removed, or promptly to replace or correct such work as specified by Buyer, Buyer either (1) may, by purchase order or otherwise replace or correct such work and charge to Seller the cost occasioned Buyer thereby, or (2) may terminate this order for default. Unless Seller corrects or replaces such work within the delivery schedule, Buyer may require the delivery of such work at a reduction in price which is equitable under the circumstances.

c. If any inspection or test is made by Buyer and/or the Government on the premises of Seller or a lower\_tier subcontractor, Seller without additional charge shall provide a safe place to work and reasonable facilities and assistance for the convenience of Buyer and/or the Government's representatives in the performance of their duties. If Buyer and/or Government inspection or test is made at a point other than the premises of Seller or a lower\_tier subcontractor, it shall be at the expense of Buyer except as otherwise provided in this order; provided that, in case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test.

d. All inspections and tests by Buyer and/or the Government shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional costs of Buyer's and/or the Government's inspection and test when work is not ready at the time such inspection and test is requested by Seller or when reinspection or retest is necessitated by prior rejection.

e. Acceptance or rejection of the work shall be made as promptly as practicable after delivery, except as otherwise provided in this order; but failure to inspect and accept or reject work shall neither relieve Seller from responsibility for such work as is not in accordance with the order requirements nor impose liability upon Buyer therefor. Except as otherwise provided in this order, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

f. Inspection and test requirements specifically required by this order are for the convenience of Buyer and/or the Government and do not relieve Seller of its responsibility to provide a high\_quality product which meets order requirements. If during the period specified in the article of this order entitled Warranty any failure to meet order requirements is uncovered (including any uncovered by Buyer's and/or the Government's own tests), Seller shall be responsible in accordance with the provisions of said warranty article for correcting the condition; this requirement applies regardless of the extent of testing or inspection specifically required by this order.

g. Seller shall provide and maintain, and require its lower\_tier subcontractors to provide and maintain, an inspection and quality control system acceptable to Buyer and the Government covering the work hereunder. Records of all inspection and quality control work by Seller and its lower\_tier subcontractors shall be kept complete and available to Buyer and/or the Government during performance of this order and for such longer period as may be specified elsewhere in this order.

h. In the event this order is, in full or in part, for services, then (i) paragraphs a through d above are deleted solely with regard to the services portion of this order and replaced with FAR 52.246-4, Inspection of Services--Fixed Price and (ii) paragraphs e through g above remain fully applicable.

## 9. **Warranty**



a. In addition to its obligations under other provisions of this order (including those concerning inspection and acceptance), Seller warrants material and workmanship, and that the items furnished under this order will be manufactured in accordance with the order requirements, and, if Seller is responsible for design, will meet all design requirements set forth in this order. The term of this warranty is for a period of three years after delivery or for a period of one year after the date first placed in use, whichever first expires (or in the case of standard commercial articles, one year after delivery).

b. Buyer shall give Seller notice of any defect or lack of conformity with order requirements within a reasonable time after discovery. Seller shall promptly thereafter (without additional cost to the Buyer) either correct or replace such defective or nonconforming item or component thereof, and correct or replace all appropriate drawings, procedures, technical manuals, design reports and substantiating data. If Buyer does not require correction or replacement of the defective or non-conforming item or component thereof, Seller, within a reasonable time after the notice shall repay such portions of the order price of the item as is equitable under the circumstances. If Seller fails to proceed with reasonable promptness to make any correction or replacement in accordance with the provisions of this article, Buyer reserves the right to cause such corrections or replacement to be made and Seller agrees to reimburse Buyer for the costs incurred thereby. Unless otherwise agreed, correction or replacement of defective or non-conforming items or components thereof shall be performed subject to and in accordance with the provisions of this order. Buyer has the right to require Seller to correct in place any defective or non-conforming item or component thereof delivered under this order or to return such item or component to Seller for correction in which case Seller shall be responsible for packing and packaging charges and shipping cost (to and from Seller's plant) for the item or component returned for correction. In exercising this right, Buyer will notify Seller which alternative it proposes to take. In this connection, Buyer will be reasonable in making its election in terms of its and the Government's time requirements, the relative economies of each course and the particular circumstances at the time of election, giving due regard to any reasonable requests of Seller. In the event that Seller is required to correct in place, Seller shall not be responsible for removal or reinstallation of the items or structural parts not furnished by Seller under this order. Seller shall not be required to incur costs for such correction in place in excess of an amount equal to the total price of this order. In the event that any defective item is returned by Buyer to Seller's plant for correction, Buyer shall be

responsible for removing the defective item from the system and Seller shall, upon completion of correction, make delivery as directed by Buyer, but shall not be obligated to incur costs in excess of the total price of this order, plus shipping (to and from Seller's plant) and packing and packaging charges, nor shall Seller be responsible for any costs of reinstallation. However, Seller shall not be responsible for shipping costs outside the continental limits of the United States.

c. The warranty with respect to a corrected or replaced item, items or components thereof, shall be subject to the same terms as the warranty provided for in paragraph a. The original warranty for other than the corrected or replaced item, items, or components thereof shall continue until the expiration of the period prescribed in paragraph a. plus a period equal to the time elapsed between the discovery of the defect and correction or replacement of the defective item, items or components thereof.

d. Defective or non\_conforming items or components thereof which Seller is required to correct or replace in accordance with the provisions of this article may be contaminated with radioactivity. Should the level of radioactivity of items or components thereof be sufficient to create by itself a "radiation area" as defined in 10 C.F.R. Sec. 20.1003 in effect on the date of this order, Seller shall nevertheless promptly correct or replace such items or components as directed by Buyer. In the event Seller's costs of correction or replacement are increased solely by reason of the level of radioactivity of any such items or components thereof which exceeds the level specified in the definition of "radiation area", an equitable adjustment shall be made, and such adjustments shall be agreed to in writing. If Buyer, with respect to any such items or components thereof having a level of radioactivity sufficient to create by itself a "radiation area", elects, as provided in paragraph b above, to require payment of an equitable portion of the order price, the parties shall not consider the estimated additional costs of correcting such item or component incurred solely by reason of the level of radioactivity specified in the definition of "radiation area".

e. Approval of designs, drawings, samples, test results, procedures, processes or schedules by Buyer or the Government shall not in any way limit or diminish Seller's warranties hereunder.

f. Computer Hardware, Software and Firmware. In addition to, and

without limitation upon, the warranty provided under the other provisions of this Article, the following provision entitled "Virus Warranty" applies to all orders and the following provision entitled Year 2000 Warranty applies to all orders for (i) customized (i.e., developed directly for Buyer) software, hardware and/or firmware and (ii) software, hardware and firmware which is incorporated within items furnished under this order.

#### 1. Virus Warranty

Software and hardware provided by the Seller shall not contain known computer viruses or other malicious software in accordance with the following:

Viruses are program code that replicate themselves on execution and create undesirable effects, generally only applicable to personal computer systems. Malicious software is program code intentionally added to programs or media to produce undesirable results. An unintentional software error is not malicious code and will be resolved in accordance with other applicable purchase order requirements.

The Seller shall take anti-virus and anti-malicious software precautions including installation and proper use of anti-virus software where applicable and implementation of workplace awareness to avoid conveying known computer viruses or other malicious software to the Buyer. Specifically, all computer files, disks, memories, or other media produced by or utilized on operating systems supported by anti-virus utilities and provided by the Seller to the Buyer (other than third party supplied software in its original, unopened packaging materials) shall be checked by the Seller prior to delivery to the Buyer to detect and remove any known computer virus or other known malicious software. The Seller virus check shall be performed using the current signature file and software revision for the Seller selected anti-virus software. The Seller shall include a statement verifying that the check has been made prior to delivery to the Buyer. The Seller is not required to perform a virus check on media generated by operating systems not supported by anti-virus utilities.

The Seller shall replace or correct media found to have virus/malicious software during the Seller's check or later found by the Buyer during initial use (including receipt inspection virus check when applicable). The Buyer will provide written notification regarding any virus/malicious software contamination to the Seller.

## 2. Year 2000 Warranty

Seller warrants that each hardware, software and firmware product manufactured, developed, or integrated by Seller and delivered under this purchase order (if this order is for supplies) and/or maintained under this purchase order (if this order is for maintenance services) shall be able to process date data from, into and between the years beginning with 19 (i.e., 1900-1999) and the years beginning with 20 (i.e., 2000-2099). This includes, but is not limited to, calculating, comparing and sequencing when used in accordance with Sellers product documentation. If the purchase order requires that specific listed products shall perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. Repair or replacement of non-compliant products shall be with products that are Year 2000 compliant. Nothing in this warranty shall be construed to limit the rights or remedies the Buyer may otherwise have under this purchase order with respect to defects other than Year 2000 performance.

g. In the event this order is, in full or in part, for services, then (i) paragraphs a and b above are deleted solely with regard to the services portion of this order and replaced with FAR 52.246-20, Warranty of Services (ii) paragraphs c and e remain fully applicable except that references to "items" or "components" are replaced with "services" and (iii) those portions of paragraphs d and f that qualify as services remain applicable.

## 10. Rights In Technical Data And Computer Software

The following clauses and provisions of the FAR and DFARS, as indicated, in effect as of the date of this order, are incorporated by reference, with the same force and effect as if the clause were provided in full text. The incorporated provisions may contain prefaces providing direction on implementation; in such instances, the clause alone applies and the implementation direction remains inapplicable. The definitions and meanings at Article 1 to these terms and conditions, to include meaning b(3) and its note, shall specifically apply to the following clauses and provisions, as modified:

a. DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items. Paragraph (f) is changed as follows and paragraphs (l) and (m) are added:

(f) Removal of Unauthorized Markings

1. Notwithstanding any provision of this order concerning inspection and acceptance, Buyer and the Government may correct, cancel, or ignore any marking not authorized by the terms of this order on any technical data furnished hereunder in accordance with the clause of this order entitled "Validation of Restrictive Markings on Technical Data."

2. Correction of nonconforming markings is not subject to this clause. The Buyer and/or the Government may, at the Sellers expense, correct any nonconforming markings if Buyer or the Government notifies the Seller and the Seller fails to correct the nonconforming markings within sixty days.

3. Authorized Markings. Absent Buyer agreement otherwise, the following are the only authorized markings (see Attachment 1):

! Government Purpose Rights Legend. Data delivered or otherwise furnished with Government Purpose Rights shall be marked with the legend at DFARS 252.227-7013(b)(2) modified to (i) also specify the purchase order number and (ii) to incorporate the following final sentence: "The following entities, their respective successors and assigns, shall possess the right to exercise said property rights, as if they were the Government, on behalf of the Government: Plant Apparatus Division of Bechtel Plant Machinery, Inc., Machinery Apparatus Operation of Bechtel Plant Machinery, Inc., Bechtel Bettis, KAPL, Inc., the Electric Boat Division of General Dynamics, Inc., and Newport News Shipbuilding, Inc.@"

! Limited Rights Legend. Data delivered or otherwise furnished with Limited Rights shall be marked with the legend at DFARS 252.227-7013(b)(3) modified to (i) also specify the purchase order number and (ii) to incorporate the following final sentence: "The following entities, their respective successors and assigns, shall possess the right to exercise said property rights, as if they were the Government, on behalf of the Government: Plant Apparatus Division of Bechtel Plant Machinery, Inc., Machinery Apparatus Operation of Bechtel Plant Machinery, Inc., Bechtel Bettis, KAPL, Inc., the Electric Boat Division of General Dynamics, Inc., and Newport News Shipbuilding, Inc.":

! Unlimited Rights Legend. DFARS 252.227-7013 does not authorize the use of a legend on data delivered or otherwise furnished with Unlimited Rights. To the extent Seller may possess any rights to the data, and to the further extent Seller asserts these rights by means of a legend (copyright or otherwise) on the data, Seller's assertion must immediately be followed by the following language: "Notwithstanding the above copyright/restriction, the Government possesses DFARS 252.227-7013 Unlimited Rights if this

is technical data and DFARS 252.227-7014 Unlimited Rights if this is computer software or computer software documentation.”

(l) Post Award Negotiation

If, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this order by the date established in the order for agreement, or within any extension established by Buyer or the Government, then Buyer or the Government may establish the respective data rights of the parties. In any event, the Seller shall proceed with completion of the order.

(m) Technical Data Pertaining to Nuclear Propulsion Plant Systems

Pursuant to subparagraph (b)(1) above, it is agreed that all technical data pertaining to nuclear propulsion plant systems have been, or will be developed exclusively with Government funds, and that all technical data generated under this order, and all technical data required to meet order requirements shall be provided to the Government with unlimited rights.

It is further agreed that promptly after delivery of all purchase order deliverables, or after any termination of all work under this purchase order, the Seller shall submit a letter report to the Buyer listing and providing a brief description of all items of technical data, pertaining to the deliverables developed or prepared under this purchase order, which items of technical data were not specified to be delivered pursuant to this purchase order. The Seller shall furnish in the Seller's format, and at the cost of reproduction, with unlimited rights, copies of the items of technical data so reported or which should have been reported, as the Buyer may require in writing from time to time. However, nothing in this requirement shall require the Seller to retain any item of such technical data beyond the period provided for in this purchase order, including the specifications, and other documents incorporated by reference, applicable to the item or type of technical data involved.

b. DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. Paragraph (f) is changed as provided below and the same added paragraphs (l) and (m) to DFARS 252.227-7013 are incorporated here (except that all paragraphs (l) and (m) references to “technical data” are deleted and replaced with “computer software and computer software documentation”).

(f) Removal of Unauthorized Markings

1. Notwithstanding any provision of this order concerning inspection and acceptance, Buyer and the Government may correct, cancel, or ignore any marking not authorized by the terms of this order on any computer software/computer software documentation furnished hereunder in accordance with the clause of this order entitled "Validation of Asserted Restrictions-Computer Software."

2. Correction of nonconforming markings is not subject to this clause. The Buyer and/or the Government may, at the Sellers expense, correct any nonconforming markings if Buyer or the Government notifies the Seller and the Seller fails to correct the nonconforming markings within sixty days.

3. Authorized Markings. Absent Buyer agreement otherwise, the following are the only authorized markings (see Attachment 1):

! Government Purpose Rights Legend. Computer software and computer software documentation delivered or otherwise furnished with Government Purpose Rights shall be marked with the legend at DFARS 252.227-7014(b)(2) modified to (i) also specify the purchase order number and (ii) to incorporate the following final sentence: "The following entities, their respective successors and assigns, shall possess the right to exercise said property rights, as if they were the Government, on behalf of the Government: Plant Apparatus Division of Bechtel Plant Machinery, Inc., Machinery Apparatus Operation of Bechtel Plant Machinery, Inc, Bechtel Bettis, KAPL, Inc., the Electric Boat Division of General Dynamics, Inc., and Newport News Shipbuilding, Inc."

! Restricted Rights Legend. Computer software and computer software documentation delivered or otherwise furnished with Restricted Rights shall be marked with the legend at DFARS 252.227-7014(b)(3) modified to (i) also specify the purchase order number and (ii) to incorporate the following final sentence: "The following entities, their respective successors and assigns, shall possess the right to exercise said property rights, as if they were the Government, on behalf of the Government: Plant Apparatus Division of Bechtel Plant Machinery, Inc, Machinery Apparatus Operation of Bechtel Plant Machinery, Inc, Bechtel Bettis, KAPL, Inc., the Electric Boat Division of General Dynamics, Inc., and Newport News Shipbuilding, Inc.":

! Unlimited Rights Legend. DFARS 252.227-7014 does not authorize

the use of a legend on computer software and computer software documentation delivered or otherwise furnished with Unlimited Rights. To the extent Seller may possess any rights to the computer software/computer software documentation, and to the further extent Seller asserts these rights by means of a legend (copyright or otherwise) on the computer software/computer software documentation, Sellers assertion must immediately be followed by the following language: “Notwithstanding the above copyright/restriction, the Government possesses DFARS 252.227-7013 Unlimited Rights if this is technical data and DFARS 252.227-7014 Unlimited Rights if this is computer software or computer software documentation.”

- c. DFARS 252.227-7015, Technical Data--Commercial Items
- d. DFARS 252.227-7016, Rights in Bid or Proposal Information
- e. DFARS 252.227-7019, Validation of Asserted Restrictions--Computer Software
- f. DFARS 252.227-7025, Limitation on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends
- g. DFARS 252.227-7027, Deferred Ordering of Technical Data and Computer Software
- h. DFARS 252.227-7030, Technical Data--Withholding of Payment, modified as follows:
  - Subparagraph (a) at the end of the first sentence, delete “or amount unless a lesser withholding is specified in the contract” and insert “or \$100,000.00 whichever is less”.
- i. DFARS 252.227-7036, Certification of Technical Data Conformity
- j. DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data

## **11. Patent Rights \_ Acquisition By The Government**

[This Article applies only to (i) purchase orders or amendments thereto, regardless of tier, placed with businesses other than small business firms and/or nonprofit organizations (ii) for the performance of experimental, developmental, or research work (includes “design” and “design and furnish” scopes of work). With regard to this latter condition, if any part of this order or amendment is for the performance of experimental, developmental or research work then this clause applies.]



The Government shall retain the Patent Rights set forth in FAR 52.227\_13, Patent Rights -- Acquisition by the Government, however, the meanings at Article 1, Definitions and Meanings to these terms and conditions, to include meaning b(3) and its note, shall specifically apply.

## **12. Patent Rights \_ Small Business Firm Or Nonprofit Organization**

[This Article applies only to (i) purchase orders or amendments thereto, regardless of tier, placed with small business firms and/or nonprofit organizations (ii) for the performance of experimental, developmental, or research work (includes “design” and “design and furnish” scopes of work). With regard to this latter condition, if any part of this order or amendment is for the performance of experimental, developmental or research work then this clause applies.]

Patent rights shall be retained under this order as set forth in FAR 52.227\_11, Patent Rights -- Retention by the Contractor (Short Form), however, the meanings at Article 1, Definitions and Meanings to these terms and conditions, to include meaning b(3) and its note, shall specifically apply.

## **13. Furnished Information**

Plans, drawings, specifications, designs, photographs and any other engineering and manufacturing information furnished by Buyer shall remain Buyer or Government property, as the case may be, shall be reproduced only as authorized in writing by Buyer, shall be used only for performance of the work under this order, and shall be returned to Buyer upon request, which request may be made during such performance or at termination or completion of the order, and Seller shall thereafter make no further use of any information derived therefrom without prior written consent of Buyer or the Government.

## **14. Classified Information and Naval Nuclear Propulsion Information (NNPI)**

Seller shall comply with the requirements applicable to the receipt, handling, control, dissemination and disposal of classified information and NNPI, as those requirements are established elsewhere within this purchase order. “Information” means data, material, equipment and any

and all other information of whatever type, kind or description. [For the definition of NNPI, refer to Security Form, NN-801, Guidelines for the Control and Protection of Unclassified Naval Nuclear Propulsion Equipment, or the Contract Security Classification Specification (Form DD-254 for DoD Sellers and DoE F5634.2 for DoE Sellers)].

15. **Reserved**

16. **Reserved**

17. **Reserved**

18. **Reserved**

19. **Reserved**

20. **Reserved**

21. **Title**

Title to all materials and supplies purchased under this order shall vest in the Government whenever title passes from Seller.

22. **Applicable Laws**

a. Except as provided at (c) below, this order shall be governed in all respects by the laws of the State of California if the order was placed by Village Marine Tec..

b. Any provision of this order that is (i) incorporated in full text or by reference from the FAR, DFARS, the Cost Accounting Standards (CAS) or any other agency regulation that implements or supplements the same, or (ii) that is substantially based on the FAR, DFARS, CAS or any such implementing or supplementing regulation, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government.

23. **Proprietary Information**

Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer incident to the placing and filling of this order shall not, unless otherwise specifically agreed upon in writing by Buyer, be deemed to be Seller proprietary information, and accordingly shall be

acquired free from any restrictions (other than restrictions which may result from a claim for patent infringement).

**24. Reserved**

**25. Reserved**

**26. Assignment**

a. Neither this order nor any interest therein nor claim thereunder shall be assigned or transferred by Seller, except as expressly authorized in writing by Buyer. In the event that Buyer consents to the assignment or transfer, Buyer reserves the right to require an executed novation agreement per FAR Part 42.

b. In no event shall copies of this order or any plans, specifications, or other similar documents relating to work under this order, if marked "**Top Secret**", "**Secret**", "**Confidential**", or "**NOFORN**", be furnished to any assignee of any claim arising under this order or to any other person not entitled to receive the same. However, a copy of any part or all of this order so marked may be furnished, or any information contained therein may be disclosed to such assignee, upon the prior written authorization of Buyer.

c. This order or any and all rights thereunder may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given to Seller.

**27. Reserved**

**28. Set\_Off**

Buyer shall be entitled at all times to set\_off against any amount payable by Buyer in connection with this order, any amount owed by Seller to Buyer arising from transactions relating to Buyer's orders.

**29. Permits**

Except as otherwise directed by Buyer, Seller shall procure and fully comply with all necessary permits or licenses required in the performance of work under this order.

### **30. Special Materials**

Special measures as delineated in the order shall be taken by Seller for the protection of and accounting for any source, special nuclear and special reactor materials supplied to it, in accordance with regulations and requirements of the cognizant Government Agency and Buyer.

### **31. Suspension Of Work For The Convenience Of The Buyer**

Buyer may by written notice, direct Seller to suspend all or any part of the work for such period of time as may be determined by Buyer to be necessary or desirable for its convenience. If such suspension unreasonably delays the progress of the work and causes additional expense or loss to Seller in the performance of the work, not due to the fault or negligence of Seller, an equitable adjustment in the price and the time for performance shall be made by agreement of the parties, and the order shall be modified in writing accordingly; provided, however, that any request by Seller for an adjustment hereunder must be asserted within thirty days from the date of a start order for resumption of work. Refer to Article 6(h) for the requirements of certifying a Request for Equitable Adjustment.

### **32. Work Indemnifications**

a. (i) As to the work to be done, or services to be performed by Seller on Buyer premises, Government premises, or the premises of other Buyer subcontractors, Seller assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death) or damage or alleged damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of performance of the work. (ii) Seller will indemnify and save harmless the Government and Buyer from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney's fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property which may occur or be alleged to have occurred as a result of or in connection with the performance of this order. Nothing in the foregoing shall be construed to require Seller to indemnify and save harmless the Government and the Buyer from any liability arising out of or resulting from a nuclear incident.

b. Seller agrees to comply with all applicable laws, rules and regulations

with respect to workman's/workers compensation or occupational disease, or withholding and payment of social security and federal income taxes, and to obtain similar agreements from all its subcontractors; and Seller further agrees to indemnify Buyer and the Government, against and to save and hold harmless Buyer and the Government from, any and all liability and expense with respect to claims against Buyer or the Government which may result from the failure or alleged failure of Seller or of any of its subcontractors to comply therewith.

**33. Reserved**

**34. Reserved**

**35. Use Of Government Property, Special Tooling, Or Special Test Equipment**

Use of Government property, special tooling, or special test equipment on this order by Seller is not authorized; and Seller agrees to execute this order without making use on any basis of Government-owned land, buildings, machine tools, equipment, special tooling, special test equipment, or other facilities without the prior approval of the Buyer.

**36. Preproduction Costs**

Seller agrees that all preproduction and start up costs and other non-recurring charges that Seller is absorbing under this order shall not be charged to Buyer, the Government or any other Naval Reactors prime contractor in any future procurement.

**37. Clauses Incorporated By Reference**

The following clauses and provisions of the FAR and DFARS, as indicated, in effect as of the date of this order, are incorporated by reference, with the same force and effect as if the clauses were provided in full text. The incorporated provisions may contain prefaces providing direction on implementation; in such instances, the clause alone applies and the implementation direction remains inapplicable. Except as otherwise provided at the specific referenced clause, the meanings at Article 1, Definitions and Meanings to these terms and conditions, to include meaning b(3) and its note, shall specifically apply. **All reference to Disputes, the Contracts Disputes Act or the Disputes Clause, contained in any referenced clause is hereby deleted.**

a. INCORPORATED IN PURCHASE ORDERS AT ALL DOLLAR LEVELS

- FAR 52.202-1, Definitions. "Government" as used therein shall retain its original meaning
- FAR 52.203-3, Gratuities
- FAR 52.204-2, Security Requirements. Less paragraph (c) which is deleted
- FAR 52.211-5, Material Requirements
- FAR 52.211-15, Defense Priority and Allocation Requirements
- FAR 52.222-1, Notice to the Government of Labor Disputes
- FAR 52.222-26, Equal Opportunity
- FAR 52.223-3, Hazardous Material Identification and Material Safety Data
- FAR 52.225-13, Restrictions on Certain Foreign Purchases
- FAR 52.227-1, Authorization and Consent and Alternate I.
- FAR 52.227-3, Patent Indemnity (applicable solely to those supplies and/or services delivered under this order that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications)
- FAR 52.227-10, Filing of Patent Applications--Classified Subject Matter
- FAR 52.234-1, Industrial Resources Developed Under Defense Production Act, Title III
- FAR 52.244-6, Subcontracts For Commercial Items and Commercial Components
- FAR 52.245-2, Government Property (Fixed Price Contracts)
- FAR 52.245-17, Special Tooling

- FAR 52.245-18, Special Test Equipment
- FAR 52.249-8, Default (Fixed Price Supply and Service)
- DFARS 252.225-7001, Buy America Act and Balance of Payments Program
- [DFARS 252.225-7009](#), Duty-Free Entry--Qualifying Country Supplies (End Products and Components)
- DFARS 252.225-7014, Preference for Domestic Specialty Metals and Alternate I
- DFARS 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings
- DFARS 252.225-7025, Restriction on Acquisition of Forgings
- DFARS 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts)
- DFARS 252.245-7001, Reports of Government Property

b. INCORPORATED IN PURCHASE ORDERS EXCEEDING \$2,500

*RESERVED*

c. INCORPORATED IN PURCHASE ORDERS EXCEEDING \$10,000

- FAR 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
- FAR 52.222-36, Affirmative Action for Workers with Disabilities
- FAR 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era

d. INCORPORATED IN PURCHASE ORDERS EXCEEDING \$100,000

- FAR 52.203-6, Restrictions on Subcontractor Sales to the Government

- FAR 52.203-7, Anti-Kickback Procedures. Less paragraph (c)(1) which is deleted
  - FAR 52.215-2, Audit and Records--Negotiation (The Navy shall have the same rights provided the Comptroller of the United States.)
  - FAR 52.222-4, Contract Work Hours and Safety Standards Act--Overtime Compensation
  - FAR 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement
  - DFARS 252.209-7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty
  - DFARS 252.247-7023, Transportation of Supplies By Sea
- e. INCORPORATED IN PURCHASE ORDERS EXCEEDING \$500,000
- FAR 52.215-10, Price Reduction for Defective Cost or Pricing Data
  - FAR 52.215-12, Subcontractor Cost or Pricing Data
  - FAR 52.215-15, Pension Adjustments and Asset Reversions
  - FAR 52.215-18, Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions
  - FAR 52.215-19, Notification of Ownership Changes
  - FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications
  - FAR 52.219-9, Small Business Subcontracting Plan and Alternate II
  - DFARS 252.215-7000, Pricing Adjustments
  - DFARS 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)
  - Cost Accounting Standards



1. Full CAS Coverage. FAR 52.230-2, Cost Accounting Standards, applies to this purchase order unless the purchase order is (i) exempt pursuant to 48 CFR 9903.201-1 or (ii) subject to 48 CFR 9903.201-2 modified coverage.

2. Modified CAS Coverage. FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, applies to this purchase order provided --

(i). Sellers business unit performing the work under this purchase order (a) received less than \$25 million in net CAS-covered awards in the immediately preceding cost accounting period and the price or cost of this purchase order is less than \$25 million or (b) received more than \$25 million in net CAS-covered award in the immediately preceding cost accounting period but no single award exceeded \$1 million, and

(ii). The Seller certified with its offer that it was eligible for and elected to use 48 CFR 9903.201-2 modified CAS coverage.

3. CAS Administration. FAR 52.230-6, Administration of Cost Accounting Standards, applies to this purchase order if either FAR 52.230-2 or FAR 52.230-3 applies to this purchase order.

f. INCORPORATED IN PURCHASE ORDERS EXCEEDING \$1,000,000

- DFARS 252.211-7000, Acquisition Streamlining

### **38. Cost Support And Certification Relative To Amendments**

a. Except where Seller demonstrates upon sufficient evidence that a FAR 15.403-1(b) exception applies, Seller shall furnish cost and pricing data via a properly executed NN-P47, Contract Pricing Proposal Cover Sheet, for (i) any proposed amendment to this order with a price impact aggregating \$500,000 or more; (ii) support of final price agreements or termination settlement agreements which exceed \$500,000.

b. Seller shall furnish properly executed SFs 1426 through 1440 in support of final price agreements and termination settlement agreements.

c. Upon completion of negotiations relative to the proposals described in a.(i) and (ii) above, Seller shall, within five working days, submit an updated NN-P47 and an NN-P34, Certificate of Current Cost or Pricing Data.

### **39. Pricing Of Adjustments**

When costs are a factor in any determination of a purchase order price adjustment pursuant to Article 6, "Changes, Extras and Substitutions", Article 31, "Suspension of Work for the Convenience of Buyer", Article 41, "Termination for Convenience" or any other article or provision of this purchase order, such costs shall be in accordance with the provisions of FAR Part 31 and DFARS Part 231 in effect on the date of this purchase order.

#### **40. Lower Tier Procurements Over \$500,000**

At least three weeks prior to placement, Seller shall submit to Buyer written notice of any sub\_tier purchase order which, when placed, will equal or exceed \$500,000 in price. Except as provided otherwise within this Article, such orders may not be placed absent the successful sub-tier offerors submission of certified cost or pricing data. The successful sub-tier offeror need not submit certified data provided (i) a FAR 15.403-1(b) exception applies and (ii) Sellers notice satisfies the following:

- a. Where basis of award is on competition such notice shall be accompanied by the factors utilized by the Seller in determining the existence of adequate competition and shall include copies of all competitive quotations upon which award of each purchase order will be based. Such notice need not be submitted if the proposed sub\_tier procurement action was previously identified in Seller's proposal to Buyer and no significant changes have occurred in either prices or other competitive factors then previously disclosed.
- b. Where a basis of award is other than competition such notice shall include information sufficient to demonstrate the applicability of the exception utilized.

Buyer reserves the right to unilaterally reject any Seller assertion that a cost or pricing data exception applies to a Seller sub-tier procurement at or in excess of \$500,000 where Buyer in good faith believes the criteria for exception have not been satisfied.

#### **41. Termination For Convenience**

Without limiting Buyers right to terminate this purchase order for the default of Seller as provided in the article entitled, "Default", Buyer may terminate all or any part of the work under this purchase order in accordance with the provisions of FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price), less subparagraph (j) in effect on the date of

this purchase order except that (i) the meanings at Article 1, Definitions and Meanings to these terms and conditions, to include meaning b(3) and its note, shall specifically apply and (ii) the time limit for submittal of termination settlement proposal as specified in paragraph (e) of such article is changed to read "four months from the effective date of termination or such further period as may be mutually agreed upon." For the requirements of certifying a termination settlement proposal refer to Article 6(h).

#### **42. Fraud or Falsification**

a. This purchase order and activities hereunder are within the jurisdiction of the Department of Energy and/or the Navy. Any knowing and willful act to falsify, conceal or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this purchase order may be punishable in accordance with applicable Federal Statutes.

b. Seller agrees that all employees engaged in the performance of this purchase order will be, if they have not been previously, informed in writing prior to commencing performance of work under this purchase order that there is a risk of Federal criminal penalties associated with any falsification, concealment or misrepresentation in connection with work performed under this purchase order. Seller agrees that a signed statement shall be, if it has not been previously, obtained from said employees prior to their commencing performance of work under this purchase order that they have been so informed. Such statements shall be retained by the Seller for at least three years after final payment on this purchase order. An acceptable form for such a statement is substantially as follows:

"This company/division/department/branch performs work under contracts which are within the jurisdiction of departments of the United States Government. Some of the work performed under these contracts affects the national security of the United States and the requirements of these contracts are designed to ensure that essential attributes of the work are carefully checked or inspected and that records accurately reflect the results of all work. Any falsification, concealment or alteration of any material fact, or any false, fraudulent or fictitious statement or representation in connection with the work under any contract within the jurisdiction of the Government is not only prohibited by company policy, but may also be punishable under Federal Law. Please acknowledge by your signature that you have read and understand the above."

c. Seller must also agree to include the following statement preprinted on

each manufacturing, inspection or test record used in conjunction with the subject subcontract:

**A Note: The recording of false, fictitious or fraudulent statements or entries on this document may be punishable as a felony under Federal Statute.**

d. Seller shall include all provisions of this Article including this sentence in all lower-tier contracts under this order. Any inability or unwillingness of a lower-tier supplier to comply with this provision should be documented in writing and submitted to the Prime Contractor.

43. **Reserved**

44. **Reserved**

#### 45. **Disclosure of Information**

a. General Requirements. The Seller shall not release to anyone outside the Sellers organization any unclassified information, regardless of medium (e.g., film, tape, document, display, brochure, etc.), regardless of purpose (e.g., P.O. performance, advertising, promotion, etc.) pertaining to any part of this purchase order or any program related to this purchase order unless --

- (1) The Buyer has given prior written approval; or
- (2) The information is otherwise in the public domain before the date of release.

b. Request Format and Timing. Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Seller shall submit its request to Buyer at least forty-five days before the proposed date for release.

c. Exception/Approval. In accordance with Paragraph (a)(1) above, approval is granted to Seller so that, as necessary, it may disclose unclassified information, including sensitive unclassified information, to domestic entities under subcontract either actually or prospectively, (including subtier orders), regardless of tier, under the purchase order for the provision of Naval Nuclear Propulsion Program (NNPP) supplies or services, entities of the Federal Government involved in the Naval Nuclear Propulsion Program having a need to know; and other entities performing NNPP work. This authority does not authorize Seller to release any

information under or related to the subject order to any entity not specified above, or not specifically affiliated with Seller under the subject purchase order through a contractual or prospective contractual relationship. In addition, this authority does not authorize the Seller to release any information under or related to the subject order to a foreign source prior to submitting the information to the Buyer for either specific Buyer approval or information as required by the purchase order.

Moreover, approval for release of information to subtiers and other entities with which Seller has a contractual or prospective contractual relationship does not extend to those entities who, regardless of relationship, do not have in place proper safeguards and procedures for receipt and handling of the sensitive information.

The requirements of Paragraphs (a) and (b) above remain in effect as set forth and Seller must receive approval for release to any entity not covered by the authority set forth above in this paragraph (c). NOTE: For more specific guidance in this area, see security control documentation applicable to this order.

d. Litigation. Should any information described in (a) above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of the Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should information, other than Paragraph (a)(2) information, be released to such authority without prior notification to, and agreement of, Buyer.

e. Survivability. Seller agrees that the requirements of this Article 45, to include Seller's obligation to obtain prior Buyer approval of any release other than a Paragraph (a)(2) or (c) release, shall survive the purchase order and that Seller shall not for a period of twenty years subsequent to the issuance of the purchase order either directly or indirectly issue any such release without the requisite approval of Buyer, its successors or assignee.

f. Mandatory Passdown. Seller shall include all provisions of this Article 45, including this sentence, in all subtier orders under this purchase order. Subtier requests for authorization to release information shall be submitted through Seller to Buyer.

#### **46. Compliance With Law; Indemnification**

a. Compliance With Law. Seller shall comply with all Federal, state and

local laws, regulations, rules, ordinances, and other requirements applicable to the performance of the work under this order.

b. Indemnification. Seller agrees to defend, hold harmless and indemnify the Buyer and its officers, directors, employees, representatives, subcontractors and/or agents, their successors and assigns, against any and all losses, claims, damages and/or allegations, including all expenses relating thereto, arising out of or relating to Seller violations of any Federal, state or local laws, regulations, rules, ordinances, or other requirements (including without limitation permits and license obligations), including but not limited to Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), and all regulations issued thereunder.

**47. Reserved**

**48. Reserved**

**49. Reimbursement for Unallowable Costs**

a. Definition. "Proposal" means the definition of "proposal" at FAR 52.242-3(a), except (i) "Seller" and "purchase order" shall respectively replace the references to "Contractor" and "Contract," and (ii) "proposal" shall include any other adjustment to the price of the order based on costs incurred (e.g., requests for equitable adjustment pursuant to Article 6, Changes, Extras and Substitutions, Article 31, Suspension of Work for the Convenience of the Buyer and Article 41, Termination for Convenience).

b. Seller shall not include in any proposal any cost which FAR Part 31 or DFARS Part 231 (in its form at the time the cost is submitted in a Seller proposal) makes unallowable.

c. Should Seller include within any proposal any cost made unallowable by FAR Part 31 and/or DFARS Part 231, and should Seller thereafter receive any payment on the basis of such unallowable cost, then Seller shall, upon its own initiative or at Buyers request, reimburse Buyer the full amount of such unallowable cost it received plus interest as determined in accordance with FAR 52.232-17, Interest.

d. FAR 52.242-3, Penalties for Unallowable Costs, being inapplicable to Government subcontracts, Seller shall in no manner be liable for any penalty or amount in excess of the amount of reimbursement determined pursuant to paragraph (c) above.

"All metal material shall be provided with certified material test reports.   
This applies to all material that are to be welded, cast and repaired in   
accordance with Navy Technical Publication S9074-AR-GIB-010/278".